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HOUSE BILL NO. 1502**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 10, 2006)

(Patron Prior to Substitute—Delegate Callahan)

A *BILL providing management agreements between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and the University of Virginia, respectively, pursuant to the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of the Code of Virginia.*

Be it enacted by the General Assembly of Virginia:

1. That the following Chapter 1 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and Virginia Polytechnic Institute and State University":

CHAPTER 1.**MANAGEMENT AGREEMENT****BY AND BETWEEN****THE COMMONWEALTH OF VIRGINIA****AND****VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY**

This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the "Commonwealth") and Virginia Polytechnic Institute and State University (hereafter, "Virginia Tech," to be abbreviated as "the University") provides as follows:

RECITALS

WHEREAS Virginia Tech has satisfied the conditions precedent set forth in subsections A and B of § 23-38.97 of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ 23-38.91 et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia ("Subchapter 3" and the "Act," respectively), as evidenced by:

1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of Virginia Tech held on September 24, 2005, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subsection A 1 of § 23-38.97 of the Act;

2. Written Application to the Governor. Virginia Tech has submitted to the Governor a written Application dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that Virginia Tech is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that Virginia Tech has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and

3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act, the Governor has found that Virginia Tech has fulfilled the requirements of subsection A 2 of § 23-38.97, and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with Virginia Tech; and

WHEREAS, Virginia Tech is therefore authorized to enter into this Management Agreement as provided in subsection D of § 23-38.88 and Subchapter 3 of the Act.

AGREEMENT

NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and Virginia Tech do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement."

"Board of Visitors" means the Board of Visitors of Virginia Tech.

"Covered Employee" means any person who is employed by Virginia Tech on either a salaried or wage basis.

"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance

60 with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.

61 "Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
62 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
63 missions of the individual public institutions of higher education of the Commonwealth.

64 "Management Agreement" means this agreement between the Commonwealth of Virginia and Virginia
65 Tech as required by subsection D of § 23-38.88 and Subchapter 3 of the Act.

66 "Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and
67 Virginia Tech.

68 "Public institution of higher education" means those two-year and four-year institutions enumerated
69 in § 23-14 of the Code of Virginia.

70 "University" means Virginia Polytechnic Institute and State University, consisting of the University
71 Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station
72 Division (State Agency 229).

73 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

74 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.

75 Subchapter 3 of the Act provides that, upon the execution of, and as of the effective date for, this
76 Management Agreement, Virginia Tech shall become a Covered Institution entitled to be granted by the
77 Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act that are
78 expressly contained in this Management Agreement. In general, subject to its management agreement
79 with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act and this
80 Management Agreement is intended to replace (i) the post-General Assembly authorization
81 prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a
82 variety of central State agencies with (ii) a post-audit system of reviews and accountability under which
83 a Covered Institution is fully responsible and fully accountable for managing itself pursuant to
84 Subchapter 3 of the Act and its management agreement with the Commonwealth.

85 SECTION 2.1.1. Assessments and Accountability. Virginia Tech and its implementation of the
86 enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board
87 of Visitors policies attached hereto as Exhibits A through F, shall be subject to the reviews, assessments,
88 and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint
89 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or
90 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or
91 Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by
92 law other than the Act.

93 SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and
94 limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement;
95 Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth
96 and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech by this
97 Management Agreement all the powers and authority contained in certain policies adopted by the Board
98 of Visitors of Virginia Tech attached hereto as Exhibits A through F and governing (1) the undertaking
99 and implementation of capital projects, and other acquisition and disposition of property (Exhibit A), (2)
100 the leasing of property, including capital leases (Exhibit B), (3) information technology (Exhibit C), (4)
101 the procurement of goods, services, including certain professional services, insurance, and construction
102 (Exhibit D), (5) human resources (Exhibit E), and (6) its system of financial management (Exhibit F),
103 including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to establish tuition,
104 fees, room, board, and other charges consistent with sum sufficient appropriation authority for
105 non-general funds as provided by the Governor and the General Assembly in the Commonwealth's
106 biennial appropriations authorization. Subject to the specific conditions and limitations contained in
107 Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement,
108 and in one or more of the Board of Visitors policies attached hereto as Exhibits A through F, the
109 Commonwealth and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech
110 all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of
111 the Act.

112 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
113 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
114 of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits A
115 through F. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its
116 legally permissible procedures, specifically delegate the duties and responsibilities set forth in this
117 Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies
118 adopted by the Board and attached hereto as Exhibits A through F, to a person or persons within the
119 University.

120 SECTION 2.1.3. Reimbursement by Virginia Tech of Certain Costs.

121 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any

intent during the next biennium to withdraw from any health or other group insurance or risk management program made available to the University through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the University is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from such health or other group insurance or risk management program, the University shall, pursuant to subdivision D 2 c of § 23-38.88, reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.

SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subsection D 2 c of § 23-38.88 of the Act, Virginia Tech has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to Virginia Tech and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.

SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § 23-38.110 of the Act and subject to the provisions of this Management Agreement, Virginia Tech may be exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the "Procurement Rules") attached to that Policy as Attachment I constitute the policies and uniform deviations from the VPPA required by subsections A and B of § 23-38.110 of the Act.

Subsection D of § 23-38.110 of the Act requires that Virginia Tech identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide Virginia Tech with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position Virginia Tech to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable Virginia Tech to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, Virginia Tech's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both Virginia Tech and public sector suppliers.

SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by Virginia Tech, the parties agree that Virginia Tech is not in a position to quantify any such cost savings at this time, although Virginia Tech expects that there will be cost savings resulting from the additional authority granted to Virginia Tech pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.

SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that Virginia Tech shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq. of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.

183 *SECTION 2.1.8. Implied Authority. Pursuant to subsection D 1 of § 23-38.88 of the Act, the only*
184 *implied authority granted to Virginia Tech by this Management Agreement is that implied authority that*
185 *is actually necessary to carry out the expressed grant of financial or operational authority contained in*
186 *this Agreement or in the policies adopted by Virginia Tech's Board of Visitors and attached hereto as*
187 *Exhibits A through F.*

188 *SECTION 2.1.9. Exercise of Authority. Virginia Tech and the Commonwealth acknowledge and agree*
189 *that the execution of this Management Agreement constitutes the conclusion of a process that, as of the*
190 *effective date of this Agreement, confers upon Virginia Tech the enhanced authority and operating*
191 *flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act.*
192 *Therefore, without any further conditions or requirements, Virginia Tech shall, on and after the effective*
193 *date of this Management Agreement, be authorized to exercise the authority conferred upon it by this*
194 *Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits A*
195 *through F, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the*
196 *extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited*
197 *by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through*
198 *F.*

199 *Virginia Tech and the Commonwealth also acknowledge and agree that, pursuant to subsection A of*
200 *§ 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of*
201 *Visitors of Virginia Tech shall assume full responsibility for management of Virginia Tech, subject to the*
202 *requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this*
203 *Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The*
204 *Board of Visitors shall be fully accountable for (a) the management of Virginia Tech as provided in the*
205 *Act, (b) meeting the requirements of §§ 2.2-5004, 23-9.2:3.02, and 23-9.6:1.01 of the Code of Virginia,*
206 *and (c) meeting such other provisions as are set forth in this Management Agreement.*

207 *SECTION 2.2. State Goals.*

208 *SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of*
209 *the Commonwealth by subsection B of § 23-38.88, prior to August 1, 2005, the Board of Visitors of*
210 *Virginia Tech adopted the resolution setting forth its commitment to the Governor and the General*
211 *Assembly to meet the State goals specified in that subsection B.*

212 *In addition to the above commitments, the University commits to furthering these State goals by:*

213 *1. In addition to its six-year target of achieving \$ 227 million in external research by 2011-12*
214 *[which is the last year of the six-year plan], the University commits to match from institutional funds,*
215 *other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided*
216 *by the State in the Appropriation Act above the amount provided from institutional funds for research in*
217 *2005-06.*

218 *2. In a concerted effort to provide educational opportunities to Virginia students attending*
219 *institutions in the Virginia Community College System ("VCCS") and Richard Bland College, the*
220 *University commits to work with the University of Virginia and the College of William and Mary in*
221 *Virginia to establish a program under which these three institutions will increase significantly the*
222 *number of such students transferring to their institutions. Specifically, pursuant to this program, the*
223 *University, the University of Virginia and the College of William and Mary in Virginia collectively*
224 *commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the*
225 *2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the*
226 *number enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii)*
227 *by the end of the decade, not less than approximately 650 new such transfer students each year over the*
228 *number enrolled in 2004-05, for a total of approximately 1,250 such transfer students each year. The*
229 *three institutions have agreed that they will mutually determine how to divide the responsibility for these*
230 *additional transfer students equitably among themselves.*

231 *3. As an institutional priority and obligation, the University commits to the Governor and General*
232 *Assembly to work meaningfully and visibly with an economically distressed region or local area of the*
233 *Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in*
234 *education, income, employment, and other factors. The University commits to establish a formal*
235 *partnership with that area to develop jointly a specific action plan that builds on the University's*
236 *programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise*
237 *to stimulate economic development in the area to make the area more economically viable, and to*
238 *improve student achievement and teacher and administrator skill sets in a school division in that area.*
239 *The University shall submit the action plan to the Governor and General Assembly by no later than*
240 *December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each*
241 *year on its progress in implementing the action plan during the prior fiscal year.*

242 *SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the*
243 *Code of Virginia, Virginia Tech, along with all other public institutions of higher education of the*
244 *Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia*

("SCHEV") by October 1, 2005, an institution-specific Six-Year Plan addressing Virginia Tech's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § 23-9.2:3.02 requires Virginia Tech to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement address, among other issues, such matters as Virginia Tech's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in Virginia Tech's Six-Year Plan submitted to SCHEV, and the parties therefore agree that Virginia Tech's Six-Year Plan and the description below meet the requirement of subsection B of § 23-38.97 of the Act.

Subsection B of § 23-38.104 of the Act requires the Board of Visitors of Virginia Tech to include in this Management Agreement Virginia Tech's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. Virginia Tech's commitment in this regard is clear. Virginia Tech recognizes that the cost of higher education as a percentage of family income has increased steadily in recent years for low and moderate income families. Since the University anticipates further increases in tuition and fees during the six year period of 2006-2012, the University developed its Funds for the Future program, which shall be substantially as described in the remainder of this Section 2.2.2, as may be amended from time to time by the Board of Visitors of Virginia Tech and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations. The Funds for the Future program was developed to increase institutional funds and other fund sources to moderate the impact of future tuition and fees increases for Virginia undergraduates from families with adjusted gross income of \$100,000 or less, as determined by federal financial aid regulations.

The Funds for the Future program works on a sliding scale of family responsibility for coverage of tuition and fees. For example, students with a family adjusted gross income of \$30,000 or less (approximately 150 percent of the poverty level for a family of four) will receive incremental grant aid sufficient to completely offset any increase in their tuition and mandatory fees during their four years of enrollment at Virginia Tech. For students with family adjusted gross income of \$30,001 to \$99,999, the University will provide varying levels of financial aid awards to reduce the impact of tuition and fee increases.

Virginia Tech serves a large number of students with financial need. Based on 2003-04 enrollment data, the University estimates that for the 2006-07 academic year approximately 5,636 students, representing over 36 percent of the Virginia Tech undergraduate student body, will receive incremental benefits under the Funds for the Future program. The institution will draw upon the full range of available resources to increase grant aid to these students and has established very aggressive goals for its institutional and private funds resources to create and sustain this program. As such, the University program is also based on the commitment of additional state General Fund support, consistent with the levels identified in its Six-Year Financial Plan; these amounts are based upon SCHEV calculations for incremental General Fund appropriations. Consistent with the current financial aid environment, the University also anticipates that existing federal, state, and University loan programs will be available, as needed, to assist students in addressing their annual costs of education not addressed by existing grant aid programs, the Funds for the Future program, or other available resources.

The Commonwealth and Virginia Tech agree that this commitment meets the requirements of subsection B of § 23-38.104 of the Act.

SECTION 2.3. Authority Granted to Virginia Cooperative Extension and the Agriculture Experiment Station Division. Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits A through F are implemented by Virginia Tech on behalf of Virginia Cooperative Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the Agriculture Experiment Station Division shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.

SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, Virginia Tech shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and Virginia Tech's Enabling Legislation.

SECTION 2.4.1. The Appropriation Act. The Commonwealth and Virginia Tech agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management

306 Agreement as Exhibits A through F, the provisions of the Appropriation Act shall control, and shall
307 continue to control unless provided otherwise by law.

308 SECTION 2.4.2. Virginia Tech's Enabling Legislation. As provided in subsection C of § 23-38.91 of
309 the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and Virginia Tech's
310 Enabling Legislation, the Enabling Legislation shall control.

311 SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § 23-38.92 of the
312 Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of
313 this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management,
314 supervision, regulation, and control of public institutions of higher education shall be applicable to
315 Virginia Tech as provided by the express terms of this Management Agreement. As further provided in
316 subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any
317 provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this
318 Management Agreement shall control.

319 SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of
320 § 23-38.93 of the Act, for purposes of §§ 2.2-5004, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 23-4.2,
321 23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2, 23-9.2:3,
322 23-9.2:3.02, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, and Chapter 4.9 (§ 23-38.75 et seq.) of the Code
323 of Virginia, Virginia Tech shall remain a public institution of higher education of the Commonwealth
324 following the effective date of this Management Agreement, and shall retain the authority granted and
325 any obligations required by such provisions, unless and until provided otherwise by law other than the
326 Act. In addition, Virginia Tech shall retain the authority, and any obligations related to the exercise of
327 such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et
328 seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.),
329 Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.),
330 Chapter 4.4 (§ 23-38.45 et seq.), Chapter 4.4:1 (§ 23-38.53:1 et seq.), Chapter 4.4:2 (§ 23-38.53:4 et
331 seq.), Chapter 4.4:3 (§ 23-38.53:11), Chapter 4.4:4 (§ 23-38.53:12 et seq.), Chapter 4.5 (§ 23-38.54 et
332 seq.), Chapter 4.7 (§ 23-38.70 et seq.), Chapter 4.8 (§ 23-38.72 et seq.), and Chapter 4.9 (§ 23-38.75 et
333 seq.), unless and until provided otherwise by law other than the Act.

334 SECTION 2.4.5. Public Access to Information. As provided in § 23-38.95 of the Act, Virginia Tech
335 shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information
336 Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct
337 business pursuant to § 2.2-3709, if expressly named therein, and, in all cases, may conduct business as
338 a "state public body" for purposes of subsection B of § 2.2-3708.

339 SECTION 2.4.6. Conflicts of Interests. As provided in § 23-38.96 of the Act, the provisions of the
340 State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) that are
341 applicable to officers and employees of a state governmental agency shall continue to apply to the
342 members of the Board of Visitors of Virginia Tech and to its Covered Employees.

343 SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other
344 powers and authorities granted to Virginia Tech pursuant to any other sections of the Code of Virginia,
345 including other provisions of the Act, are not affected by this Management Agreement or the Board
346 policies attached hereto as Exhibits A through F.

347 ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, 348 MANAGEMENT AGREEMENT.

349 SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the
350 Board of Visitors policies attached hereto as Exhibits A through F shall be reported to the Secretaries
351 of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on
352 Finance and the House Committee on Appropriations and shall be posted on the University's website.
353 The change or deviation shall become effective unless one of the above persons notifies the University in
354 writing within 60 days that the change or deviation is substantial and material. Any substantial and
355 material change or deviation shall require the execution by the parties of an amendment to this
356 Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of
357 § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to
358 subsection D 4 of § 23-38.88 of the Act.

359 SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.

360 SECTION 3.2.1. Governor. Pursuant to subsection D 4 of § 23-38.88, and § 23-38.98, of the Act, if
361 the Governor makes a written determination that Virginia Tech is not in substantial compliance with the
362 terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor
363 shall provide a copy of that written determination to the Rector of the Board of Visitors of Virginia
364 Tech and to the members of the General Assembly, and (ii) Virginia Tech shall develop and implement
365 a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial
366 compliance with the terms of this Management Agreement and with the requirements of the Act, as soon
367 as practicable, and shall provide a copy of such corrective action plan to the members of the General

Assembly. If after a reasonable period of time after the corrective action plan has been implemented by Virginia Tech, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, Virginia Tech shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until Virginia Tech has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.

SECTION 3.2.2. General Assembly. As provided in subsection D 4 of § 23-38.88 of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § 23-38.98 of the Act, Virginia Tech's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if Virginia Tech fails to meet the requirements of Subchapter 3 of the Act, or (ii) if Virginia Tech fails to meet the requirements of this Management Agreement.

ARTICLE 4. GENERAL PROVISIONS.

SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.

SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § 23-38.88 of the Act, Virginia Tech and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if Virginia Tech were not governed by the Act; provided that the Virginia Tort Claims Act, § 8.01.195.1 et seq. of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to Virginia Tech.

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2010.

WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of legislation enacted into law providing for the terms of such Agreement.

EXHIBIT A

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING CAPITAL PROJECTS

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional preauthorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted

429 Board of Visitors policies regarding the University's capital projects, whether funded by a state general
430 fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to
431 encompass and implement the authority that may be granted to the University pursuant to Subchapter 3
432 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation
433 Act, or any other sections of the Code of Virginia, including other provisions of the Act and the
434 University's Enabling Legislation, are not affected by this Policy.

435 II. DEFINITIONS.

436 As used in this policy, the following terms shall have the following meanings, unless the context
437 requires otherwise:

438 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
439 Chapter 4.10 of Title 23 of the Code of Virginia.

440 "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
441 State University.

442 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting
443 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

444 "Capital Professional Services" means professional engineering, architecture, land surveying and
445 landscape architecture services related to capital projects.

446 "Capital project(s)" means the acquisition of any interest in land, including improvements on the
447 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital
448 Leases.

449 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
450 public institution of higher education of the Commonwealth of Virginia that has entered into a
451 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the
452 Act.

453 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
454 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
455 missions of the individual public institutions of higher education of the Commonwealth.

456 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
457 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
458 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

459 "State Tax Supported Debt" means bonds, notes, or other obligations issued under Article X, Section
460 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
461 general government funds, as defined in the December 20, 2004 Report to the Governor and General
462 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

463 "University" means Virginia Polytechnic Institute and State University, consisting of the University
464 Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station
465 Division (State Agency 229).

466 III. SCOPE OF POLICY.

467 This Policy applies to the planning and budget development for capital projects, capital project
468 authorization, and the implementation of capital projects, whether funded by a general fund
469 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
470 sources.

471 This Policy provides guidance for 1) the process for developing one or more capital project
472 programs for the University, 2) authorization of new capital projects, 3) procurement of Capital
473 Professional Services and construction services, 4) design reviews and code approvals for capital
474 projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land
475 acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting
476 requirements.

477 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

478 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
479 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
480 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
481 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
482 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
483 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
484 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
485 and procedures.

486 V. CAPITAL PROGRAM.

487 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt
488 a system for developing one or more capital project programs that defines or define the capital needs of
489 the University for a given period of time consistent with the University's published Master Plan. This
490 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of

Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant. It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.

VI. AUTHORIZATION OF CAPITAL PROJECTS.

The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those preappropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.

It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, for all other capital projects. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement. Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through the Executive Vice President and Chief Operating Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.

VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.

It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to:

A. Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;

B. Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;

C. Making procurement rules clear in advance of any competition;

D. Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;

E. Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations;

F. Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of womenowned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for:

A. A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

B. A prequalification procedure for contractors or products;

552 C. A procedure for special construction contracting methods, including but not limited to
553 design-build and construction management contracts; and

554 D. A prompt payment procedure.

555 The University also may enter into cooperative arrangements with other private or public health or
556 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,
557 in the judgment of the University, the purposes of this Policy will be furthered.

558 VIII. DESIGN REVIEWS AND CODE APPROVALS.

559 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final
560 Major Capital Project authorization based on the size, scope and cost estimate provided with the design.
561 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be
562 required. For all capital projects other than Major Capital Projects, the President, acting through the
563 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and
564 project authorization based on the size, scope and cost estimate provided with the design. It shall be the
565 University's policy that all capital projects shall be designed and constructed in accordance with
566 applicable Virginia Uniform Statewide Building Code ("VUSBC") standards and the applicable
567 accessibility code.

568 The President, acting through the Executive Vice President and Chief Operating Officer, shall
569 designate a Building Official responsible for building code compliance by either (i) hiring an individual
570 to be the University Building Official, or (ii) continuing to use the services of the Department of
571 General Services, Division of Engineering and Buildings, to perform the Building Official function. If
572 option (i) is selected, the individual hired as the University Building Official shall be a full-time
573 employee, a registered professional architect or engineer, and certified by the Department of Housing
574 and Community Development to perform this Building Official function. The University Building Official
575 shall issue building permits for each capital project required by the VUSBC to have a building permit,
576 and shall determine the suitability for occupancy of, and shall issue certifications for building
577 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification,
578 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital
579 project and that such capital project has been inspected by the State Fire Marshal or his designee.
580 When serving as the University Building Official, such individual shall organizationally report directly
581 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it
582 shall fulfill the code review requirement by maintaining a review unit supported by resources and staff
583 who are certified by the Department of Housing and Community Development in accordance with
584 § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and
585 documents for compliance with building codes and standards and perform required inspections of work
586 in progress and the completed capital project. No individual licensed professional architect or engineer
587 hired or contracted with to perform these functions shall also perform other building code-related
588 design, construction, facilities-related project management or facilities management functions for the
589 University on the same capital project.

590 IX. ENVIRONMENTAL IMPACT REPORTS.

591 It shall be the policy of the University to assess the environmental, historic preservation, and
592 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
593 to the extent practicable. The University shall develop a procedure for the preparation and approval of
594 environmental impact reports for capital projects, in accordance with State environmental, historic
595 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
596 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
597 \$300,000 or more.

598 X. BUILDING DEMOLITIONS.

599 It shall be the policy of the University to consider the environmental and historical aspects of any
600 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The
601 University shall develop a procedure for the preparation and review of demolition requests, including
602 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review
603 Board in accordance with State historic preservation requirements generally applicable to capital
604 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding
605 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported
606 Debt, general laws applicable to State owned property shall apply.

607 XI. BUILDING OR LAND ACQUISITIONS.

608 It is the policy of the University that capital projects involving building or land acquisition shall be
609 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real
610 property. The President, acting through the Executive Vice President and Chief Operating Officer, shall
611 ensure that the project management system implemented pursuant to Section XIII below provides for a
612 review and analysis of all pertinent matters relating to the acquisition of buildings and land as any
613 prudent purchaser would perform to the end that any building or land acquired by the University shall

be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

A. Environmental and Land Use Considerations.

It is the policy of the University to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the University to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.

C. Title and Survey.

A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the University's ability to own, occupy, convey or develop the real property.

D. Appraisal.

An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.

XII. BUILDING OR LAND DISPOSITIONS.

The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the University's Enabling Legislation.

XIII. PROJECT MANAGEMENT SYSTEMS.

The President, acting through the Executive Vice President and Chief Operating Officer, shall implement one or more systems for the management of capital projects for the University. The systems may include the delegation of project management authority to appropriate University officials, including a grant of authority to such officials to engage in further delegation of authority as the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.

The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.

The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction.

XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund

appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

EXHIBIT B

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING LEASES OF REAL PROPERTY

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY POLICY GOVERNING LEASES OF REAL PROPERTY

I. PREAMBLE.

In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the University, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, Virginia Polytechnic Institute and State University may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this Policy.

II. DEFINITIONS.

The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" means the Board of Visitors of Virginia Polytechnic Institute and State University.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Covered Institution" means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.

"Expense Lease" means an Operating Lease of real property under the control of another entity to the University.

"Income Lease" means an Operating Lease of real property under the control of the University to

another entity.

"Lease" or "Leases" means any type of lease involving real property.

"Operating Lease" means any lease involving real property, or improvements thereon that is not a Capital Lease.

"University" means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).

III. SCOPE OF POLICY.

This Policy provides guidance for the implementation of all University Leases.

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.

V. REQUIREMENTS FOR LEASES.

A. Factors to Be Considered When Entering into Leases.

All Leases shall be for a purpose consistent with the mission of the University. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the space is intended.

B. Competition to Be Sought to Maximum Practicable Degree.

Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under guidelines that may be developed and adopted by the President, acting through the Executive Vice President and Chief Operating Officer, it is impractical to procure Leases through competition.

C. Approval of Form of Lease Required.

The form of Leases entered into by the University shall be approved by the University's legal counsel.

D. Execution of Leases.

All Leases entered into by the University shall be executed only by those University officers or persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University, no other University approval shall be required for leases or leasing, nor state approval required except in the case of leases of real property as may be governed by general state law in accordance with § 23-38.109 and § 23- 38.112 of the Act.

E. Capital Leases.

The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.

F. Compliance with Applicable Law.

All Leases of real property by the University shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.

G. Certification of Occupancy.

All real property covered by an Expense Lease or leased by the University under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.

EXHIBIT C

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA

AND
VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY
PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005

POLICY GOVERNING
INFORMATION TECHNOLOGY

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY
POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between the Commonwealth and the University that incorporates this Policy.

The Board of Visitors of Virginia Polytechnic Institute and State University is authorized to adopt this Information Technology Policy pursuant to § 23-38.111 of the Code of Virginia.

II. DEFINITIONS.

As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and State University.

"Information Technology" or "IT" shall have the same meaning as set forth in § 2.2- 2006 of the Code of Virginia as it currently exists and from time to time may be amended.

"Major information technology project" or "major IT project" shall have the same meaning as set forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

"Policy" means this Information Technology Policy adopted by the Board of Visitors.

"State Chief Information Officer" or "State CIO" means the Chief Information Officer of the Commonwealth of Virginia.

"University" means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).

III. SCOPE OF POLICY.

This Policy is intended to cover and implement the authority that may be granted to Virginia Polytechnic Institute and State University pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University's enabling legislation as that term is defined in § 23- 38.89 of the Act.

This Policy shall govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University. Upon the effective date of a Management Agreement between the Commonwealth and the University, as authorized by subsection D of § 23-38.88 and § 23-38.111, therefore, the University shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2- 2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure,

architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, however, that the University still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the University.

The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.

IV. GENERAL PROVISIONS.

A. Board of Visitors Accountability and Delegation of Authority.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.

B. Strategic Planning.

The President, acting through the Vice President for Information Technology and Chief Information Officer, shall be responsible for overall IT strategic planning at the University, which shall be linked to and in support of the University's overall strategic plan. At least 45 days prior to each fiscal year, the President, acting through the Vice President for Information Technology and Chief Information Officer, shall make available the University's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the University's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § 2.2-2007 of the Code of Virginia and into which the University's plan is to be incorporated.

C. Expenditure Reporting and Budgeting.

The President, acting through the Executive Vice President and Chief Operating Officer, shall approve and be responsible for overall IT budgeting and investments at the University. The University's IT budget and investments shall be linked to and in support of the University's IT strategic plan, and shall be consistent with general University policies, the Board-approved annual operating budget, and other Board approvals for certain procurements. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures. The University shall be specifically exempt from:

Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget requests) as it currently exists and from time to time may be amended;

§§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as they currently exist and from time to time may be amended; and

any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.

D. Project Management.

Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.

The President, acting through the appropriate designee, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and

921 revised from time to time.

922 On a quarterly basis, the President, acting through the Vice President for Information Technology
923 and Chief Information Officer, shall report to the Information Technology Investment Board on the
924 budget, schedule, and overall status of the University's major IT projects. This requirement shall not
925 apply to research projects, research initiatives, or instructional programs.

926 The President, acting through the Vice President for Information Technology and Chief Information
927 Officer in cooperation with the Provost and Executive Vice President and Chief Operating Officer, shall
928 be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial
929 approval.

930 The University shall be specifically exempt from:

931 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project
932 management) as it currently exists and from time to time may be amended;

933 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management)
934 as they currently exist and from time to time may be amended; and

935 any other substantially similar provision of the Code of Virginia governing IT project management,
936 as it currently exists or from time to time may be amended.

937 The State CIO and the Information Technology Investment Board shall continue to have the authority
938 regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of
939 § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall
940 continue to provide the University with reasonable notice of, and a reasonable opportunity to correct,
941 any identified problems before a project is terminated.

942 E. Infrastructure, Architecture, Ongoing Operations, and Security.

943 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines
944 related to IT infrastructure, architecture, ongoing operations, and security developed by the
945 Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific
946 circumstances of the University. Copies of the policies shall be made available to the Information
947 Technology Investment Board.

948 The President, acting through the Vice President for Information Technology and Chief Information
949 Officer, in cooperation with the Provost and Executive Vice President and Chief Operating Officer, shall
950 be responsible for implementing such policies, standards, and guidelines adopted by the Board, as
951 amended and revised from time to time. For purposes of implementing this Policy, the President shall
952 appoint an existing University employee to serve as a liaison between the University and the State CIO.

953 F. Audits.

954 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines
955 developed by the Commonwealth or those based upon industry best practices for project auditing as
956 defined by leading IT experts, including consulting firms, or a nationally recognized project auditing
957 association, appropriately tailored to the specific circumstances of the University, which provide for
958 Independent Validation and Verification ("IV&V") of the University's major IT projects. Copies of the
959 policies, standards, and guidelines, as amended and revised from time to time, shall be made available
960 to the Information Technology Investment Board.

961 Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure,
962 architecture, ongoing operations, and security, shall also be the responsibility of the University's
963 Internal Audit Department and the Auditor of Public Accounts.

964
965 EXHIBIT D

966
967 MANAGEMENT AGREEMENT
968 BETWEEN
969 THE COMMONWEALTH OF VIRGINIA
970 AND

971 VIRGINIA POLYTECHNIC INSTITUTE
972 AND STATE UNIVERSITY

973 PURSUANT TO
974 THE RESTRUCTURED HIGHER EDUCATION
975 FINANCIAL AND ADMINISTRATIVE OPERATIONS
976 ACT OF 2005

977
978
979 POLICY GOVERNING
980 THE PROCUREMENT OF GOODS, SERVICES,
981 INSURANCE, AND CONSTRUCTION AND
982 THE DISPOSITION OF SURPLUS MATERIALS

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY
POLICY GOVERNING THE PROCUREMENT OF
GOODS, SERVICES, INSURANCE AND CONSTRUCTION
AND THE DISPOSITION OF SURPLUS MATERIALS

I. PREAMBLE.

A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that Virginia Polytechnic Institute and State University, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the University.

C. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the University's Enabling Legislation are not affected by this Policy.

II. DEFINITIONS.

As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act " means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement".

"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and State University.

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Effective Date" means the effective date of the Management Agreement.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.

"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 between the Commonwealth of Virginia and Virginia Polytechnic Institute and State University. "Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction" attached to this Policy as Attachment 1.

"Services" as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.

"Surplus materials" means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the University.

"University" means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229).

III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who,

1044 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
1045 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
1046 and procedures.

1047 *IV. GENERAL PROVISIONS.*

1048 *A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement*
1049 *Policies.*

1050 *The University has had decentralization and pilot program autonomy in many procurement functions*
1051 *and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy*
1052 *previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore*
1053 *is adopted by the Board of Visitors to enable the University to develop a procurement system, as well as*
1054 *a surplus materials disposition system for the University as a whole. Any University electronic*
1055 *procurement system shall integrate or interface with the Commonwealth's electronic procurement system.*

1056 *This Policy shall be effective on the Effective Date of the University's initial Management Agreement*
1057 *with the Commonwealth. The implementing policies and procedures adopted by the President, acting*
1058 *through the Executive Vice President and Chief Operating Officer or his designee, to implement this*
1059 *Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting*
1060 *procurements at the University, including policies regarding the nature and amounts of procurements*
1061 *that may be undertaken without the approval of the Board of Visitors, or of the President, acting*
1062 *through the Executive Vice President and Chief Operating Officer.*

1063 *B. Scope and Purpose of University Procurement Policies.*

1064 *This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be*
1065 *the policy of the University that procurements conducted by the University result in the purchase of high*
1066 *quality goods and services at reasonable prices, and that the University be free, to the maximum extent*
1067 *permitted by law and this Policy, from constraining policies that hinder the ability of the University to*
1068 *do business in a competitive environment. This Policy, together with the Rules Governing Procurement*
1069 *of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to*
1070 *all procurements undertaken by the University, regardless of the source of funds.*

1071 *C. Collaboration, Communication, and Cooperation with the Commonwealth.*

1072 *The University is committed to developing, maintaining, and sustaining collaboration,*
1073 *communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy,*
1074 *particularly with the Offices of the Secretaries of Administration and Technology, the Department of*
1075 *General Services, and the Virginia Information Technologies Agency. Identifying business objectives and*
1076 *goals common to both the University and the Commonwealth and the mechanisms by which such*
1077 *objectives and goals may be jointly pursued and achieved are among the desired outcomes of such*
1078 *collaboration, communication, and cooperation.*

1079 *D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

1080 *The University is committed to maximizing its internal operational efficiencies, economies of scale*
1081 *among institutions of higher education, and the leveraged buying power of the Commonwealth as a*
1082 *whole.*

1083 *Consistent with this commitment, the University:*

1084 *i) may purchase from and participate in all statewide contracts for goods and services, including*
1085 *information technology goods and services, except that the University shall purchase from and*
1086 *participate in contracts for communications services and telecommunications facilities entered into by*
1087 *the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an*
1088 *exception is provided in the Appropriation Act or by other law, and provided that orders not placed*
1089 *through statewide contracts shall be processed directly or by integration or interface through the*
1090 *Commonwealth's electronic procurement system;*

1091 *ii) shall use directly or by integration or interface the Commonwealth's electronic procurement*
1092 *system and comply with the business plan for the Commonwealth's electronic procurement system, as*
1093 *modified by an agreement between the Commonwealth and the University, which agreement shall not be*
1094 *substantially different than the agreement attached to this Policy as Attachment 2; and*

1095 *iii) shall adopt a small, woman-owned, and minority-owned ("SWAM") business program that is*
1096 *consistent with the Commonwealth's SWAM program.*

1097 *E. Implementation.*

1098 *To effect its implementation under the Act, and if the University remains in continued substantial*
1099 *compliance with the terms and conditions of this Management Agreement with the Commonwealth*
1100 *pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the University's*
1101 *procurement of goods, services, insurance, and construction, and the disposition of surplus materials*
1102 *shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2,*
1103 *except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information*
1104 *Technologies Agency, Chapter 20.1 (§ 2.2-2005 et. seq.) of Title 2.2, and the Information Technology*
1105 *Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency*

requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ 2.2-1124 and 1125; the requirement to purchase from the Department for the Blind and Vision Impaired ("VIB") (§ 2.2-1117); and any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of University capital projects and construction-related professional services (§ 2.2-1132).

V. UNIVERSITY PROCUREMENT POLICIES.

A. General Competitive Principles.

In connection with University procurements and the processes leading to award of contracts for goods, services, insurance, and construction, the University is committed to:

1. seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;
2. conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;
3. making procurement rules clear in advance of any competition;
4. providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;
5. ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and

6. providing for the free exchange of information between the University, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.

B. Access to Records.

Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to § 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.

C. Cooperative Procurements and Alliances.

In circumstances where the University determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the University that meet its business goals and objectives, the University is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.

D. Training; Ethics in Contracting.

The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and

1167 engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.

1168 The University shall maintain an ongoing program to provide professional development opportunities
1169 to its buying staff and to provide methods training to internal staff who are engaged in placing
1170 decentralized small purchase transactions.

1171 E. Ethics and University Procurements.

1172 In implementing the authority conferred by this Policy, the personnel administering any procurement
1173 shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting
1174 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title
1175 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31
1176 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et
1177 seq.) of Chapter 12 of Title 18.2.

1178 VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

1179 The policy and procedures for disposal for surplus materials shall provide for the sale,
1180 environmentally-appropriate disposal, or recycling of surplus materials by the University and the
1181 retention of the resulting proceeds by the University.

1182 VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND
1183 PROCEDURES.

1184 A. The President, acting through the Executive Vice President and Chief Operating Officer or his
1185 designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures
1186 for the University, which, in addition to the Rules, implement applicable provisions of law and this
1187 Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any
1188 implementing policies and procedures adopted by the University. The implementing policies and
1189 procedures (i) shall include the delegation of procurement authority by the Board to appropriate
1190 University officials who shall oversee University procurements of goods, services, insurance, and
1191 construction, including a grant of authority to such officials to engage in further delegation of authority
1192 as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set
1193 forth in Part V above.

1194 B. Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules
1195 shall become effective on the Effective Date of the University's initial Management Agreement with the
1196 Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the
1197 University on behalf of the University for goods, services, insurance, and construction. This Policy, the
1198 Rules, and any implementing policies and procedures adopted by the University shall not affect existing
1199 contracts already in effect.

1200 C. The Rules and University implementing policies and procedures for all University procurements of
1201 goods, services, insurance, and construction, and the disposition of surplus property shall be
1202 substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of
1203 Higher Education and their Vendors in their form as of the effective date of this Policy and as amended
1204 or changed in the future, and with University procedures specific to the Acquisition of Goods and
1205 Services. The Rules and University implementing policies and procedures shall implement a system of
1206 competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including
1207 professional services as defined in the Rules, insurance, and construction.

1208 VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

1209 A. Protests, Appeals and Debarment.

1210 The Rules and University implementing policies and procedures for procurements other than capital
1211 outlay shall include a process or processes for an administrative appeal by vendors, firms or
1212 contractors. Protests and appeals may challenge determinations of vendor, firm or contractor
1213 non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are
1214 filed within the times specified by the Rules. Remedies available shall be limited to reversal of the
1215 action challenged or, where a contract already being performed is declared void, compensation for the
1216 cost of performance up to the time of such declaration. The Rules and University implementing policies
1217 and procedures also may establish the basis and process for debarment of any vendor, firm or
1218 contractor.

1219 B. Prompt Payment of Contractors and Subcontractors.

1220 The Rules and University implementing policies and procedures shall include provisions related to
1221 prompt payment of outstanding invoices, which shall include payment of interest on properly-presented
1222 invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the
1223 lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The
1224 payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or
1225 the date established by the contract. All contracts also shall require prompt payment of subcontractors
1226 by the general contractor, upon receipt of payment by the University.

1227 C. Types of Procurements.

1228 The Rules and University implementing policies and procedures shall implement a system of

competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the University. Such policies and procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.

D. Approval and Public Notice of Procurements

The Rules and University implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.

E. Administration of Contracts.

The Rules and University implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.

F. Non-Discrimination.

The Rules and University implementing policies and procedures shall provide for a nondiscriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

ATTACHMENT I

Rules Governing Procurement of Goods, Services, Insurance, and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia Governed by Subchapter 3 of the

Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia

In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:

§ 1. Purpose. - The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.

§ 2. Scope of Procurement Authority. - Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.

§ 3. Competition is the Priority. - To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

1290 § 4. Definitions. - As used in these Rules:

1291 "Affiliate" means an individual or business that controls, is controlled by, or is under common
1292 control with another individual or business. A person controls an entity if the person owns, directly or
1293 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition
1294 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
1295 members of the board of directors or similar governing body of the business or (ii) is convertible into,
1296 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
1297 partnership interest shall be deemed to be a voting security.

1298 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
1299 and various elements of required services that in total are optimal relative to the Institution's needs.

1300 "Business" means any type of corporation, partnership, limited liability company, association, or sole
1301 proprietorship operated for profit.

1302 "Competitive negotiation" is a method of contractor selection that includes the following elements:

1303 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
1304 procured, specifying the factors that will be used in evaluating the proposal and containing or
1305 incorporating by reference the other applicable contractual terms and conditions, including any unique
1306 capabilities or qualifications that will be required of the contractor.

1307 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
1308 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
1309 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
1310 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
1311 also shall be published on the Department of General Services' central electronic procurement website
1312 and may be published on other appropriate websites. In addition, proposals may be solicited directly
1313 from potential contractors.

1314 3. a. Procurement of professional services. The procurement of professional services for capital
1315 projects shall be conducted using a qualification-based selection process. The Institution shall engage in
1316 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the
1317 basis of initial responses and with emphasis on professional competence, to provide the required
1318 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
1319 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed
1320 project, as well as alternative concepts. The Request for Proposal shall not, however, request that
1321 offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may
1322 discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and
1323 where appropriate, nonbinding estimates of price for services. Proprietary information from competing
1324 offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined
1325 in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all
1326 information developed in the selection process to this point, the Institution shall select in the order of
1327 preference two or more offerors whose professional qualifications and proposed services are deemed
1328 most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a
1329 contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair
1330 and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked
1331 first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on
1332 until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine
1333 in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly
1334 more highly qualified and suitable than the others under consideration, a contract may be negotiated
1335 and awarded to that offeror.

1336 A contract for architectural or professional engineering services relating to construction projects may
1337 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience
1338 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under
1339 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of
1340 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the
1341 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set
1342 in the Request for Proposal. Any unused amounts from any contract term may be carried forward.
1343 Competitive negotiations for such contracts may result in awards to more than one offeror provided the
1344 Request for Proposal stated the potential for a multi-vendor award.

1345 Multiphase professional services contracts satisfactory and advantageous to the Institution for
1346 environmental, location, design and inspection work regarding construction of infrastructure projects
1347 may be negotiated and awarded based on qualifications at a fair and reasonable price for the first
1348 phase only, when completion of the earlier phases is necessary to provide information critical to the
1349 negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such
1350 contract, the Institution shall state the anticipated intended total scope of the project and determine in
1351 writing that the nature of the work is such that the best interests of such Institution require awarding

the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Covered Institution" or "Institution" means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act. "Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.

"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software. "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured. "Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1,000,000; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall still apply to professional services for such small construction projects.

"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract

1413 *been procured through competitive sealed bidding or competitive negotiation.*

1414 *"Professional services" means work performed by an independent contractor within the scope of the*
1415 *practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,*
1416 *dentistry, medicine, optometry, pharmacy or professional engineering.*

1417 *"Public body" means any legislative, executive or judicial body, agency, office, department, authority,*
1418 *post, commission, committee, institution, board or political subdivision created by law to exercise some*
1419 *sovereign power or to perform some governmental duty, and empowered by law to undertake the*
1420 *activities described in these Rules.*

1421 *"Public contract" means an agreement between the Institution and a nongovernmental source that is*
1422 *enforceable in a court of law.*

1423 *"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform*
1424 *fully the contract requirements and the moral and business integrity and reliability that will assure good*
1425 *faith performance, and who has been prequalified, if required.*

1426 *"Responsive bidder" means a person who has submitted a bid that conforms in all material respects*
1427 *to the Invitation to Bid.*

1428 *"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative*
1429 *Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*

1430 *"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction*
1431 *adopted by the governing body of the Covered Institution.*

1432 *"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified*
1433 *goods or nonprofessional services through real-time electronic bidding, with the award being made to*
1434 *the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed*
1435 *and bidders shall have the opportunity to modify their bid prices for the duration of the time period*
1436 *established for bid opening.*

1437 *"Services" means any work performed by an independent contractor wherein the service rendered*
1438 *does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials*
1439 *and supplies.*

1440 *"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working*
1441 *environment and individual goals that utilizes work experience and related services for assisting the*
1442 *handicapped person to progress toward normal living and a productive vocational status.*

1443 *§ 5. Methods of procurement. -*

1444 *A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for*
1445 *the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,*
1446 *or competitive negotiation as provided in this section, unless otherwise authorized by law.*

1447 *B. Professional services shall be procured by competitive negotiation. Qualification-based selection*
1448 *shall be used for design services.*

1449 *C. Goods, services, or insurance may be procured by competitive negotiation.*

1450 *D. Construction may be procured only by competitive sealed bidding, except that competitive*
1451 *negotiation may be used in the following instances upon a determination made in advance by the*
1452 *Institution and set forth in writing that competitive sealed bidding is either not practicable or not*
1453 *fiscally advantageous to the public, which writing shall document the basis for this determination:*

1454 *1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

1455 *2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;*

1456 *3. By the Institution for the construction of highways and any draining, dredging, excavation,*
1457 *grading or similar work upon real property; or*

1458 *E. Upon a determination in writing that there is only one source practicably available for that which*
1459 *is to be procured, a contract may be negotiated and awarded to that source without competitive sealed*
1460 *bidding or competitive negotiation. The writing shall document the basis for this determination. The*
1461 *Institution shall issue a written notice stating that only one source was determined to be practicably*
1462 *available, and identifying that which is being procured, the contractor selected, and the date on which*
1463 *the contract was or will be awarded. This notice shall be posted in a designated public area, which may*
1464 *be the Department of General Services' website for the Commonwealth's central electronic procurement*
1465 *system, or published in a newspaper of general circulation on the day the Institution awards or*
1466 *announces its decision to award the contract, whichever occurs first. Public notice shall also be*
1467 *published on the Department of General Services' website for the Commonwealth's central electronic*
1468 *procurement system and may be published on other appropriate websites.*

1469 *F. In case of emergency, a contract may be awarded without competitive sealed bidding or*
1470 *competitive negotiation; however, such procurement shall be made with such competition as is*
1471 *practicable under the circumstances. A written determination of the basis for the emergency and for the*
1472 *selection of the particular contractor shall be included in the contract file. The Institution shall issue a*
1473 *written notice stating that the contract is being awarded on an emergency basis, and identifying that*
1474 *which is being procured, the contractor selected, and the date on which the contract was or will be*

awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

§ 6. Cooperative procurement. -

A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government; and

2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

§ 7. Design-build or construction management contracts authorized. -

A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.

B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

§ 8. Modification of the contract. -

A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.

§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The Institution shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. -

The Institution shall include in every contract over \$10,000 the following provisions: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the "performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

§ 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

§ 13. Comments concerning specifications. - The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

§ 14. Prequalification generally; prequalification for construction. -

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause.

The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental

1659 *Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any*
1660 *substantially similar law of the United States or another state;*

1661 6. *The contractor or any officer, director or owner thereof is currently debarred pursuant to an*
1662 *established debarment procedure from bidding or contracting by any public body, agency of another*
1663 *state or agency of the federal government; and*

1664 7. *The contractor failed to provide to the Institution in a timely manner any information requested by*
1665 *the Institution relevant to subdivisions 1 through 6 of this subsection.*

1666 § 15. *Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid*
1667 *from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest*
1668 *responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to*
1669 *obtain a contract price within available funds. However, the negotiation may be undertaken only under*
1670 *conditions and procedures described in writing and approved by the Institution prior to issuance of the*
1671 *Invitation to Bid and summarized therein.*

1672 § 16. *Cancellation, rejection of bids; waiver of informalities. -*

1673 A. *An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or*
1674 *proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of*
1675 *the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,*
1676 *any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a*
1677 *particular responsive and responsible bidder or offeror.*

1678 B. *The Institution may waive informalities in bids.*

1679 § 17. *Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no*
1680 *insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus*
1681 *lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to*
1682 *the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall*
1683 *preclude the Institution from debarring a prospective insurer pursuant to § 18.*

1684 § 18. *Debarment. - Prospective contractors may be debarred from contracting for particular types of*
1685 *supplies, services, insurance or construction, for specified periods of time. Any debarment procedure*
1686 *shall be established in writing by the Institution. Any debarment procedure may provide for debarment*
1687 *on the basis of a contractor's unsatisfactory performance for the Institution.*

1688 § 19. *Purchase programs for recycled goods; Institution responsibilities. -*

1689 A. *The Institution may implement a purchase program for recycled goods and may coordinate its*
1690 *efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8 of*
1691 *the Code of Virginia and §§ 20 and 22 of these Rules.*

1692 B. *The Department of Environmental Quality, with advice from the Virginia Recycling Markets*
1693 *Development Council, shall advise the Institution concerning the designation of recycled goods.*

1694 § 20. *Preference for Virginia products with recycled content and for Virginia firms. -*

1695 A. *In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or*
1696 *services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be*
1697 *decided by lot.*

1698 B. *Whenever any bidder is a resident of any other state and such state under its laws allows a*
1699 *resident contractor of that state a preference, a like preference may be allowed by the Institution to the*
1700 *lowest responsive and responsible bidder who is a resident of Virginia.*

1701 C. *Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where*
1702 *goods are being offered, and existing price preferences have already been taken into account, preference*
1703 *shall be given to the bidder whose goods contain the greatest amount of recycled content.*

1704 § 21. *Preference for Virginia coal used in the Institution. - In determining the award of any contract*
1705 *for coal to be purchased for use in the Institution with state funds, the Institution shall procure using*
1706 *competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering*
1707 *coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price*
1708 *of the low responsive and responsible bidder offering coal mined elsewhere.*

1709 § 22. *Preference for recycled paper and paper products used by the Institution. -*

1710 A. *In determining the award of any contract for paper and paper products to be purchased for use*
1711 *by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable*
1712 *for the purpose intended, so long as the price is not more than ten percent greater than the price of the*
1713 *low responsive and responsible bidder or offeror offering a product that does not qualify under*
1714 *subsection B.*

1715 B. *For purposes of this section, recycled paper and paper products means any paper or paper*
1716 *products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

1717 § 23. *Withdrawal of bid due to error. -*

1718 A. *A bidder for a public construction contract, other than a contract for construction or maintenance*
1719 *of public highways, may withdraw his bid from consideration if the price bid was substantially lower*
1720 *than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and*

the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

§ 24. Contract Pricing Arrangements. -

A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.

B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

§ 25. Workers' compensation requirements for construction contractors and subcontractors. -

A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

§ 26. Retainage on construction contracts. -

A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least

1782 ninety-five percent of the earned sum when payment is due, with no more than five percent being
1783 retained to ensure faithful performance of the contract. All amounts withheld may be included in the
1784 final payment.

1785 B. Any subcontract for a public project that provides for similar progress payments shall be subject
1786 to the provisions of this section.

1787 § 27. Public construction contract provisions barring damages for unreasonable delays declared
1788 void. -

1789 A. Any provision contained in any public construction contract of the Institution that purports to
1790 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
1791 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
1792 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
1793 causes within their control shall be void and unenforceable as against public policy.

1794 B. Subsection A shall not be construed to render void any provision of a public construction contract
1795 awarded by the Institution that:

1796 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
1797 contractor, or its subcontractors, agents or employees;

1798 2. Requires notice of any delay by the party claiming the delay;

1799 3. Provides for liquidated damages for delay; or

1800 4. Provides for arbitration or any other procedure designed to settle contract disputes.

1801 C. A contractor making a claim against the Institution for costs or damages due to the alleged
1802 delaying of the contractor in the performance of its work under any public construction contract of the
1803 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
1804 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
1805 shall be equal to the percentage of the contractor's total delay claim that is determined through
1806 litigation or arbitration to be false or to have no basis in law or in fact.

1807 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
1808 the contractor in the performance of work under any public construction contract for the Institution, it
1809 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to
1810 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution
1811 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is
1812 determined through litigation or arbitration to have been made in bad faith.

1813 § 28. Bid bonds. -

1814 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of
1815 \$1,000,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is
1816 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he
1817 will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not
1818 exceed five percent of the amount bid.

1819 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for
1820 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

1821 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids
1822 or proposals for construction contracts anticipated to be less than \$1,000,000.

1823 § 29. Performance and payment bonds. -

1824 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1,000,000
1825 awarded to any prime contractor or (ii) public construction contract exceeding \$1,000,000 awarded to
1826 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,
1827 structures or other improvements to real property owned by the Institution, the contractor shall furnish
1828 to the Institution the following bonds:

1829 1. Except for transportation-related projects, a performance bond in the sum of the contract amount
1830 conditioned upon the faithful performance of the contract in strict conformity with the plans,
1831 specifications and conditions of the contract. For transportation-related projects, such bond shall be in
1832 a form and amount satisfactory to the Institution.

1833 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of
1834 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom
1835 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the
1836 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor
1837 supplied or performed in the furtherance of the work.

1838 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but
1839 only for periods when the equipment rented is actually used at the site.

1840 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor
1841 that are authorized to do business in Virginia.

1842 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

1843 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

1844 E. Nothing in this section shall preclude the Institution from requiring payment or performance
1845 bonds for construction contracts below \$1,000,000.

1846 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish
1847 a payment bond with surety thereon in the sum of the full amount of the contract with such
1848 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are
1849 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the
1850 work provided for in the subcontract.

1851 § 30. Alternative forms of security. -

1852 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash
1853 escrow in the face amount required for the bond.

1854 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the
1855 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain
1856 designated funds in the face amount required for the bid, payment or performance bond. Approval shall
1857 be granted only upon a determination that the alternative form of security proffered affords protection
1858 to the Institution equivalent to a corporate surety's bond.

1859 § 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or
1860 performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for
1861 Proposal.

1862 § 32. Action on performance bond. - No action against the surety on a performance bond shall be
1863 brought by the Institution unless brought within one year after (i) completion of the contract, including
1864 the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty
1865 that gave rise to the action.

1866 § 33. Actions on payment bonds; waiver of right to sue. -

1867 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished
1868 material in accordance with the contract documents in furtherance of the work provided in any contract
1869 for which a payment bond has been given, and who has not been paid in full before the expiration of 90
1870 days after the day on which the claimant performed the last of the labor or furnished the last of the
1871 materials for which he claims payment, may bring an action on the payment bond to recover any
1872 amount due him for the labor or material. The obligee named in the bond need not be named a party to
1873 the action.

1874 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no
1875 contractual relationship, express or implied, with the contractor, may bring an action on the
1876 contractor's payment bond only if he has given written notice to the contractor within 180 days from the
1877 day on which the claimant performed the last of the labor or furnished the last of the materials for
1878 which he claims payment, stating with substantial accuracy the amount claimed and the name of the
1879 person for whom the work was performed or to whom the material was furnished. Notice to the
1880 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to
1881 such contractor at any place where his office is regularly maintained for the transaction of business.
1882 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not
1883 be subject to the time limitations stated in this subsection.

1884 C. Any action on a payment bond shall be brought within one year after the day on which the
1885 person bringing such action last performed labor or last furnished or supplied materials.

1886 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
1887 it is in writing, signed by the person whose right is waived, and executed after such person has
1888 performed labor or furnished material in accordance with the contract documents.

1889 § 34. Public inspection of certain records. -

1890 A. Except as provided in this section, all proceedings, records, contracts and other public records
1891 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
1892 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
1893 seq.).

1894 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
1895 shall not be open to public inspection.

1896 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect
1897 bid records within a reasonable time after the opening of all bids but prior to award, except in the
1898 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,
1899 bid records shall be open to public inspection only after award of the contract.

1900 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect
1901 proposal records within a reasonable time after the evaluation and negotiations of proposals are
1902 completed but prior to award, except in the event that the Institution decides not to accept any of the
1903 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection
1904 only after award of the contract.

1905 E. Any inspection of procurement transaction records under this section shall be subject to
1906 reasonable restrictions to ensure the security and integrity of the records.

1907 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in
1908 connection with a procurement transaction or prequalification application submitted pursuant to
1909 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et
1910 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to
1911 or upon submission of the data or other materials, (ii) identify the data or other materials to be
1912 protected, and (iii) state the reasons why protection is necessary.

1913 § 35. Exemption for certain transactions. -

1914 A. The provisions of these Rules shall not apply to:

1915 1. The selection of services related to the management and investment of the Institution's endowment
1916 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be
1917 governed by the Uniform Management of Institutional Funds Act (§ 55- 268.1 et seq.) as required by
1918 § 23-76.1.

1919 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the
1920 Institution. However, such purchase procedures shall provide for competition where practicable.

1921 3. Procurement of any construction or planning and design services for construction by the
1922 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is
1923 obligated to conform to procurement procedures that are established by federal statutes or regulations,
1924 whether or not those federal procedures are in conformance with the provisions of these Rules.

1925 4. The University of Virginia Medical Center.

1926 5. The purchase of goods and services by the Institution when such purchases are made under a
1927 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

1928 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
1929 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
1930 regulations not in conformance with the provisions of these Rules, the Institution may comply with such
1931 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination
1932 of the Institution's President or his designee that acceptance of the grant or contract funds under the
1933 applicable conditions is in the public interest. Such determination shall state the specific provision of
1934 these Rules in conflict with the conditions of the grant or contract.

1935 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

1936 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into
1937 contracts with faith-based organizations for the purposes described in this section on the same basis as
1938 any other nongovernmental source without impairing the religious character of such organization, and
1939 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

1940 B. For the purposes of this section, "faith-based organization" means a religious organization that is
1941 or applies to be a contractor to provide goods or services for programs funded by the block grant
1942 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.
1943 104-193.

1944 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this
1945 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's
1946 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based
1947 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of
1948 religious freedom by the recipients of such goods, services, or disbursements.

1949 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and
1950 purchase orders prominently display a nondiscrimination statement indicating that it does not
1951 discriminate against faith-based organizations.

1952 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any
1953 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on
1954 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on
1955 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as
1956 other organizations that contract with public bodies to account for the use of the funds provided;
1957 however, if the faith-based organization segregates public funds into separate accounts, only the
1958 accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in
1959 clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

1960 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,
1961 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent
1962 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to
1963 expenditures pursuant to contracts, if any, for the services of chaplains.

1964 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization
1965 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based
1966 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of

1967 a particular religion.

1968 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant
1969 to a contract between the Institution and a faith-based organization, objects to the religious character of
1970 the faith-based organization from which the individual receives or would receive the goods, services, or
1971 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date
1972 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

1973 The Institution shall provide to each individual who applies for or receives goods, services, or
1974 disbursements provided pursuant to a contract between the Institution and a faith-based organization a
1975 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based
1976 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's
1977 charitable or religious character, practices, or expression. No provider of services may discriminate
1978 against you on the basis of religion, a religious belief, or your refusal to actively participate in a
1979 religious practice. If you object to a particular provider because of its religious character, you may
1980 request assignment to a different provider. If you believe that your rights have been violated, please
1981 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

1982 § 37. Exemptions from competition for certain transactions. - The Institution may enter into contracts
1983 without competition, as that term is described in subsections A through J of § 5 (Methods of
1984 procurement) of these Rules, for:

1985 1. The purchase of goods or services that are produced or performed by or related to:

1986 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the
1987 Blind and Vision Impaired;

1988 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported
1989 employment services serving the handicapped;

1990 c. Private educational institutions; or

1991 d. Other public educational institutions.

1992 2. Speakers and performing artists;

1993 3. Memberships and Association dues;

1994 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of
1995 goods or services by the Institution;

1996 5. Group travel in foreign countries;

1997 6. Conference facilities and services;

1998 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,
1999 registration and tournament fees;

2000 8. Royalties; or

2001 9. The purchase of legal services, provided that the Office of the Attorney General has been
2002 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

2003 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
2004 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility
2005 service without competitive sealed bidding or competitive negotiation if purchased through an
2006 association of which the Institution is a member if the association was formed and is maintained for the
2007 purpose of promoting the interest and welfare of and developing close relationships with similar public
2008 bodies, provided such association has procured the insurance or electric utility services by use of
2009 competitive principles and provided that the Institution has made a determination in advance after
2010 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive
2011 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this
2012 determination.

2013 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning:

2014 "Contractor" means the entity that has a direct contract with the Institution.

2015 "Debtor" means any individual, business, or group having a delinquent debt or account with any
2016 state agency that obligation has not been satisfied or set aside by court order or discharged in
2017 bankruptcy.

2018 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
2019 provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days
2020 after receipt of a proper invoice by the Institution or its agent or (b) thirty days after receipt of the
2021 goods or services by the Institution..

2022 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor
2023 to whom the contract was awarded or to any subcontractor in the performance of the work provided for
2024 in such contract.

2025 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment
2026 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

2027 § 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the provisions

2028 of § 26 relating to retainage shall remain valid.

2029 § 42. Prompt payment of bills by the Institution. -

2030 A. The Institution shall promptly pay for the completely delivered goods or services by the required
2031 payment date.

2032 Payment shall be deemed to have been made when offset proceedings have been instituted, as
2033 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

2034 B. Separate payment dates may be specified for contracts under which goods or services are
2035 provided in a series of partial deliveries or executions to the extent that such contract provides for
2036 separate payment for such partial delivery or execution.

2037 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where
2038 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall
2039 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by
2040 the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or
2041 services.

2042 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made
2043 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these
2044 Rules.

2045 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall
2046 include:

2047 1. A payment clause that obligates the contractor to take one of the two following actions within
2048 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
2049 subcontractor under that contract:

2050 a. Pay the subcontractor for the proportionate share of the total payment received from the
2051 Institution attributable to the work performed by the subcontractor under that contract; or

2052 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the
2053 subcontractor's payment with the reason for nonpayment.

2054 2. A payment clause that requires (i) individual contractors to provide their social security numbers
2055 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
2056 numbers.

2057 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts
2058 owed by the contractor that remain unpaid after seven days following receipt by the contractor of
2059 payment from the Institution for work performed by the subcontractor under that contract, except for
2060 amounts withheld as allowed in subdivision 1.

2061 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,
2062 interest shall accrue at the rate of one percent per month."

2063 Any such contract awarded shall further require the contractor to include in each of its subcontracts
2064 a provision requiring each subcontractor to include or otherwise be subject to the same payment and
2065 interest requirements with respect to each lower-tier subcontractor.

2066 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment
2067 clause in this section shall not be construed to be an obligation of the Institution. A contract
2068 modification shall not be made for the purpose of providing reimbursement for the interest charge. A
2069 cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

2070 § 46. Interest penalty; exceptions. -

2071 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the
2072 Institution to a vendor that remain unpaid after seven days following the payment date. However,
2073 nothing in this section shall affect any contract providing for a different rate of interest, or for the
2074 payment of interest in a different manner.

2075 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on
2076 corporate loans (prime rate) at large United States money center commercial banks as reported daily in
2077 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of
2078 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of
2079 interest established pursuant to § 58.1-1812 of the Code of Virginia.

2080 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed
2081 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of
2082 delivery of goods or services or the accuracy of any invoice received for the goods or services. The
2083 exception from the interest penalty provided by this subsection shall apply only to that portion of a
2084 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of
2085 the disagreement.

2086 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the
2087 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a
2088 contractor from receiving interest on such funds under an approved escrow agreement.

2089 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or

portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

§ 47. Ineligibility. -

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

§ 48. Appeal of denial of withdrawal of bid. -

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

§ 49. Determination of nonresponsibility. -

A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action

2151 as provided in § 54.

2152 The provisions of this subsection shall not apply to procurements involving the prequalification of
2153 bidders and the rights of any potential bidders under such prequalification to appeal a decision that
2154 such bidders are not responsible.

2155 B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the
2156 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in
2157 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or
2158 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the
2159 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or
2160 directed award as provided in subsection A of § 54, or both.

2161 If it is determined that the decision of the Institution was not an honest exercise of discretion, but
2162 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable
2163 state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract
2164 has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

2165 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract
2166 shall proceed under this section, and may not protest the award or proposed award under the
2167 provisions of § 50 of these Rules.

2168 D. Nothing contained in this section shall be construed to require the Institution, when procuring by
2169 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed
2170 to be the most advantageous.

2171 § 50. Protest of award or decision to award. -

2172 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall
2173 submit the protest in writing to the Institution, or an official designated by the Institution, no later than
2174 ten days after the award or the announcement of the decision to award, whichever occurs first. Public
2175 notice of the award or the announcement of the decision to award shall be given by the Institution in
2176 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any
2177 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to
2178 protest the award or decision to award such contract shall submit the protest in the same manner no
2179 later than ten days after posting or publication of the notice of such contract as provided in § 5 of these
2180 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part
2181 upon information contained in public records pertaining to the procurement transaction that are subject
2182 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall
2183 expire ten days after those records are available for inspection by such bidder or offeror under § 34, or
2184 at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or
2185 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest
2186 and the relief sought. The Institution or designated official shall issue a decision in writing within ten
2187 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror
2188 appeals within ten days of receipt of the written decision by invoking administrative procedures meeting
2189 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as
2190 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the
2191 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of
2192 Alternative Dispute Resolution ("ADR") shall constitute an administrative appeal procedure meeting the
2193 standards of § 55 of these Rules.

2194 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then
2195 the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise
2196 it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary
2197 or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but
2198 performance has not begun, the performance of the contract may be enjoined. Where the award has
2199 been made and performance has begun, the Institution may declare the contract void upon a finding
2200 that this action is in the best interest of the public. Where a contract is declared void, the performing
2201 contractor shall be compensated for the cost of performance up to the time of such declaration. In no
2202 event shall the performing contractor be entitled to lost profits.

2203 C. Where the Institution, an official designated by it, or an appeals board determines, after a
2204 hearing held following reasonable notice to all bidders, that there is probable cause to believe that a
2205 decision to award was based on fraud or corruption or on an act in violation of these Rules, the
2206 Institution, designated official or appeals board may enjoin the award of the contract to a particular
2207 bidder.

2208 § 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the
2209 validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be
2210 affected by the fact that a protest or appeal has been filed.

2211 § 52. Stay of award during protest. - An award need not be delayed for the period allowed a bidder
2212 or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing

of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution ("ADR") as an administrative procedure.

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.

D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

§ 54. Legal actions. -

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.

E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

2274 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a
2275 contractor.

2276 § 55. Administrative appeals procedure. -

2277 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to
2278 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from
2279 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes
2280 arising during the performance of a contract, or (v) any of these. Such administrative procedure may
2281 include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a
2282 disinterested person or panel, the opportunity to present pertinent information and the issuance of a
2283 written decision containing findings of fact. The disinterested person or panel shall not be an employee
2284 of the governmental entity against whom the claim has been filed. The findings of fact shall be final and
2285 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so
2286 grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings
2287 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these
2288 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a
2289 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution
2290 Council in establishing an Alternative Dispute Resolution ("ADR") procedure.

2291 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute
2292 judicial review if such action is brought within thirty days of receipt of the written decision.

2293 § 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes
2294 arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and
2295 other alternative dispute resolution procedures. However, such procedures shall be nonbinding and
2296 subject to § 2.2-514 of the Code of Virginia, as applicable.

2297 § 57. Ethics in public contracting. - The Institution and its governing body, officers and employees
2298 shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement
2299 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

2300

2301

ATTACHMENT 2

2302

Memorandum of Agreement

2303

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

2304

ERP/SciQuest Implementation with eVA

2305

The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute

2306

and State University (University) agree to the following:

2307

I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system
2308 (Banner).

2309

II. Initially, all non-exempt orders produced by the ERP/SciQuest integration will be transmitted to
2310 eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format.
2311 Longer term a more real-time option may be mutually agreed by the Department of General
2312 Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the
2313 ERP and eVA systems.

2314

III. The University may request that eVA contract vendors provide a version of their contract catalog
2315 for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog
2316 through eVA, then the University will access these catalogs as described in item B8 of the Metrics
2317 section of this document. In any event, the University shall be responsible for payment of all eVA
2318 transaction fees for non-exempt orders to unregistered vendors and exempt orders the University
2319 chooses to issue to unregistered and registered vendors through eVA.

2320

IV. eVA will load all non-exempt University orders into the eVA Data Warehouse. For clarity, it is
2321 understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from
2322 mandatory processing through eVA.

2323

V. In lieu of processing individual orders for requirements through eVA, a more efficient
2324 administrative approach is to establish a blanket or standing order. The University is authorized to use
2325 such an approach where it makes good business sense. The

2326

University will ensure vendors understand that eVA transaction fees will be invoiced at the time
2327 blanket or standing orders are issued, that the transaction fee will be based on the total order amount,
2328 and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless
2329 of the performance/delivery schedule specified in the order.

2330

VI. eVA will deliver University non-exempt orders to vendors that are identified as accepting
2331 electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other
2332 orders to vendors. Whereas the University maintains a University specific electronic vendor record that
2333 identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA
2334 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the
2335 eVA Business Plan as follows:

A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor refuses eVA terms and conditions". The University agrees that it will pay the eVA transaction fees for these orders.

B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or CGI-AMS.

The University further agrees that:

1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

3. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

VII. The University will not require separate vendor registrations as a prerequisite for responding to University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to entities. The University will have the option to receive a subset of vendor related data. Until an enterprise W-9 process is established, the University will be responsible for collection of W-9 information.

VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.

IX. Integration of the University's electronic procurement solution with the University's ERP is the responsibility of the University. The solution must provide for orders, change orders and cancellations.

Guidelines

1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA..

2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8PM and 4AM. eVA will transmit registered vendor orders it receives within fifteen minutes or less.

3. Non-exempt orders to un-registered vendors are to be transmitted to eVA for loading to the Data Warehouse. The University shall be responsible for payment of all eVA transaction fees for non-exempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements for unregistered vendor orders.

4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA standard format.

5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

6. eVA Interface standard does not currently support PCard orders; however these orders may be processed via the interface as (a) confirming orders or (b) orders for pcards on file with the vendor.

Schedule

The University shall implement this agreement no later than July 2006.

Metrics

A. The University shall comply with the following Governor's eVA Management Objective

95% of all non-exempt orders to be processed by eVA. Includes non-exempt orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All non-exempt orders not processed by eVA shall be reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

B. The University shall meet the following management objectives for electronic procurement:

1. Provide end users, including purchase-card users, access to an electronic system for buying;

2. Conduct business with eVA registered vendors whenever possible;

2397 3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers
2398 electronically using eVA;

2399 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar
2400 value, that include commodity codes, complete item descriptions, quantities, and unit prices;

2401 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five
2402 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and
2403 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the
2404 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to
2405 monitor the usage of confirming orders with the objective of reducing their numbers to the extent
2406 possible.

2407 The University agrees that, for confirming orders, it will resolve any vendor dispute, including
2408 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such
2409 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or
2410 CGI-AMS.

2411 The University further agrees that:

2412 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
2413 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
2414 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

2415 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
2416 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

2417 c. In the event the University does not provide resolution notification to the eVA Business Manager
2418 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
2419 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

2420 6. Timely process electronic change orders and cancellations;

2421 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA web site except
2422 as specifically exempted by DPS;

2423 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
2424 end users using the ERP/SciQuest Integration system. The University will be responsible for the
2425 accuracy of contract catalog pricing loaded into the ERP/SciQuest.

2426 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
2427 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10
2428 below);

2429 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate
2430 commodities, when such are identified.

2431 11. Complete and certify the monthly eVA Dashboard Report, and

2432 12. Timely remit any eVA transaction and non-use fees incurred by the institution.

2433 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.

2434 D. The University shall assure that payments to CGI-AMS are current.

2435
2436 EXHIBIT E

2437
2438 MANAGEMENT AGREEMENT

2439 BETWEEN

2440 THE COMMONWEALTH OF VIRGINIA

2441 AND

2442 VIRGINIA POLYTECHNIC INSTITUTE

2443 AND STATE UNIVERSITY

2444 PURSUANT TO

2445 THE RESTRUCTURED HIGHER EDUCATION

2446 FINANCIAL AND ADMINISTRATIVE OPERATIONS

2447 ACT OF 2005

2448
2449
2450 POLICY GOVERNING

2451 HUMAN RESOURCES FOR

2452 PARTICIPATING COVERED EMPLOYEES

2453 AND OTHER UNIVERSITY EMPLOYEES

2454
2455
2456 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE

2457 AND STATE UNIVERSITY

2458 POLICY GOVERNING HUMAN RESOURCES FOR

**PARTICIPATING COVERED EMPLOYEES
AND OTHER UNIVERSITY EMPLOYEES**

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the University shall have responsibility and accountability for human resources management for all University employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § 23-38.114 of the Act "are state employees of" the University. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or University-sponsored benefit plans as described by the Management Agreement.

The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the University for its employees.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and State University.

"Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.

"Covered Employee" means any person who is employed by the University on either a salaried or non-salaried (wage) basis.

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Employee" means Covered Employee unless the context clearly indicates otherwise.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University.

"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.

"Governing Law" means the Act and the University's Enabling Legislation.

"Management Agreement" means the agreement required by subsection D of § 23- 38.88 of the Act between the University and the Commonwealth.

"Participating Covered Employee" means (i) all salaried nonfaculty University employees who were employed as of the day prior to the Effective Date of the University's initial Management Agreement with the Commonwealth, and who elect pursuant to § 23- 38.115 of the Act to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by Virginia Polytechnic Institute and State University, (ii) all salaried nonfaculty University employees who are employed by the University on or after the Effective Date of the initial Management Agreement between the University and the Commonwealth, (iii) all non-salaried nonfaculty University employees

2520 without regard to when they were hired, (iv) all faculty University employees without regard to when
2521 they were hired.

2522 "University" means Virginia Polytechnic Institute and State University, consisting of the University
2523 Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station
2524 Division (State Agency 229).

2525 "University employee" means a Covered Employee.

2526 "University Human Resources System" means the human resources system for University employees
2527 as provided for herein.

2528 III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

2529 The University has had human resources system autonomy through decentralization for its employees
2530 for some time. For example, general faculty at the University are expressly exempt from the Virginia
2531 Personnel Act. The University has had decentralization in most human resources functions and activities
2532 since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the
2533 administration of hiring, classification, and promotion practices; the administration of separate
2534 retirement plans.

2535 The Act extends and reinforces the human resources autonomy previously granted to the University.
2536 This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and
2537 have in place by or after the Effective Date of its initial Management Agreement with the
2538 Commonwealth, a human resources system or systems for all University employees. On that Effective
2539 Date, and until changed by the University or unless otherwise specified in this Policy, the systems for
2540 University employees shall be the same systems applicable to those employees in effect immediately
2541 prior to that Effective Date.

2542 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

2543 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
2544 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
2545 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
2546 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
2547 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
2548 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
2549 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
2550 and procedures.

2551 V. VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY HUMAN RESOURCES 2552 SYSTEMS.

2553 A. Adoption and Implementation of University Human Resources Systems. The President, acting
2554 through the Executive Vice President and Chief Operating Officer, is hereby authorized to adopt and
2555 implement human resources systems for University employees that implement and are consistent with the
2556 Governing Law, other applicable provisions of law, these University human resources policies, and any
2557 other human resources policies adopted by the Department of Human Resource Management or the
2558 Board of Visitors for University personnel, unless University employees are exempted from those other
2559 human resources policies by law or policy. The University Human Resources Systems shall include a
2560 delegation of personnel authority to appropriate University officials responsible for overseeing and
2561 implementing the University Human Resources Systems, including a grant of authority to such officials
2562 to engage in further delegation of authority as the President or his designee deems appropriate.

2563 The University commits to regularly engage employees in appropriate discussions and to receive
2564 employee input as the new University Human Resources Systems are developed. The University will
2565 regularly communicate the details of new proposals to all employees who are eligible to participate in
2566 the new University Human Resources System through written communication, open meetings, and
2567 website postings as appropriate, so that employees will have full information that will help them
2568 evaluate the merits of the new human resource system compared to the then-current State human
2569 resource system.

2570 Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and
2571 until amended as described below, the University's human resources systems shall consist of the
2572 following:

2573 1. the current human resources system for faculty described in the Virginia Tech Faculty Handbook
2574 and Special Research Faculty Handbook as posted on the University's web site,
2575 <http://www.policies.vt.edu/>, and periodically amended; and

2576 2. the current human resources system for "Classified Employees" as posted on the Virginia
2577 Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.htm>
2578 and the University's website, <http://www.policies.vt.edu/>, and Human Resources' website,
2579 <http://www.hr.vt.edu>, as periodically amended;

2580 3. the Human Resources System for salaried nonfaculty "Participating Covered Employees," as
2581 posted on the University's website, <http://www.policies.vt.edu>, and Human Resources' website,

http://www.hr.vt.edu/, as periodically amended; and

4. the Human Resource System for wage employees as set forth in the current Virginia Tech policies, procedures, and guidelines, as posted on the University's website, <http://www.policies.vt.edu/>, and Human Resource' website, <http://www.hr.vt.edu/>, as periodically amended, and for graduate students employed on assistantships as set forth in the Virginia Tech Graduate School policies, as posted on the Graduate School website, <http://www.grads.vt.edu/>, as periodically amended.

All the systems described above, except the system described in paragraph 2, may be amended by the President, acting through the Executive Vice President and Chief Operating Officer, consistent with these human resources policies. The system described in paragraph 2 may be amended only by the State.

B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.

The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that the University officials who develop, implement and administer the University Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these University human resources policies, and other applicable Board of Visitors' human resources policies affecting University employees, and (ii) that compliance with such laws and human resources policies is achieved.

VI. HUMAN RESOURCES POLICIES.

The Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above shall embody the following human resources policies and principles:

A. Election by Salaried Nonfaculty University Employees. Upon the adoption by the University of a University Human Resources System, all salaried nonfaculty University employees who were in the employment of the University as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth, shall be given written notice of their right to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia and administered by the Department of Human Resource Management, or (ii) the University Human Resources System. A salaried nonfaculty University employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty University employee who elects in writing to participate in and be governed by the University Human Resources System, also, by that election, shall be deemed to have elected to be eligible to participate in and to be governed by the human resources, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the University as part of that University Human Resources System.

Each such salaried nonfaculty University employee, shall be given at least 90 days to make the election required by the prior paragraph. Such 90 day period shall begin to run on the date on which the University Human Resources System becomes effective for that University employee's classification of employees. If such a salaried nonfaculty University employee does not make an election by the end of that specified election period, that University employee shall be deemed not to have elected to participate in the University Human Resources System. If such a salaried nonfaculty University employee elects to participate in the University Human Resources System, that election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty University employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 an opportunity to elect to participate in the University Human Resources System; provided that, each time prior to offering such opportunity to such salaried nonfaculty University employees, and at least once every two years after the effective date of the University Human Resources System, the University shall make available to each of its salaried nonfaculty University employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.

B. Classification and Compensation.

1. General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of University financial resources. The plans adopted by the University for its faculty and other Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require

2643 the approval of any State agency or officer, and shall be subject to the review and approval by the
2644 Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its
2645 classification and compensation plans to all University employees. The plans applicable to Participating
2646 Covered Employees may or may not include changes in classification or compensation announced by the
2647 Commonwealth depending on such factors as the availability of necessary financial resources to fund
2648 any such changes, and subject to the review and approval by the Board of Visitors of any major
2649 changes in the University's compensation plans.

2650 2. Classification Plan. The Systems shall include one or more classification plans for University
2651 employees that classify positions according to job responsibilities and qualifications. On the Effective
2652 Date of the University's initial Management Agreement with the Commonwealth, and until changed by
2653 the University, the classification plans shall be the same plans that are in effect for each group of
2654 employees immediately prior to that Effective Date.

2655 3. Compensation Plan. The Systems shall include one or more compensation plans for each
2656 University employee classification or group. On the Effective Date of the University's initial
2657 Management Agreement with the Commonwealth, and until changed by the Department of Human
2658 Resource Management, the compensation plan for Classified Employees shall be the compensation plan
2659 in effect immediately prior to that Effective Date, known as the Commonwealth's Classified
2660 Compensation Plan. On that Effective Date, and until changed by the University, the compensation plan
2661 or plans for all Participating Covered Employees shall be the compensation plan or plans in effect
2662 immediately prior to that Effective Date. The University may adopt one or more compensation plans for
2663 Participating Covered Employees that are non-graded plan(s) based on internal and external market
2664 data and other relevant factors to be determined annually. Any major change in compensation plans for
2665 Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that
2666 change becomes effective. Any change recommended in the compensation plans may take into account
2667 the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative
2668 value of jobs, the competency and skills of the individual employee, internal equity, and the availability
2669 of necessary financial resources to fund the proposed change. The compensation payable to University
2670 employees shall be authorized and approved only by designated University officers delegated such
2671 authority by the University, and shall be consistent with the approved compensation plan for the
2672 relevant position or classification. Further approval by any other State Agency, governmental body or
2673 officer is not required for setting, adjusting or approving the compensation payable to individual
2674 Participating Covered Employees.

2675 4. Wages. The Systems shall include policies and procedures for the authorization, computation and
2676 payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and
2677 call back, and for the payment of hourly employees.

2678 5. Payment of Compensation. The Systems shall include policies and procedures for paying
2679 compensation to employees, including the establishment of one or more payday schedules.

2680 6. Work Schedule and Workweek. The Systems shall include policies and procedures for the
2681 establishment of, and modifications to, work schedules and workweeks for all University employees,
2682 including alternative work schedules and sites, and telecommuting policies and procedures.

2683 7. Other Classification and Compensation Policies and Procedures. The Systems may include any
2684 other reasonable classification and compensation policies and procedures the President, acting through
2685 the Executive Vice President and Chief Operating Officer, deems appropriate.

2686 C. Benefits.

2687 The Systems shall provide fringe benefits to all benefits eligible employees, including retirement
2688 benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The
2689 benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may
2690 include an optional benefits plan for benefits eligible employees, including additional insurance
2691 coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance
2692 programs, employee intramural and recreational passes, and other wellness programs. As provided in
2693 subsections B and C of § 23- 38.119 of the Act, the University may require Participating Covered
2694 Employees to pay all or a portion of the cost of group life, disability and accidental death and
2695 dismemberment insurance, which may be collected through a payroll deduction program. Participating
2696 Covered Employees shall not be required to present evidence of insurability for basic group life
2697 insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement
2698 System group insurance programs under the terms of and to the extent allowed by subsections B and D
2699 of § 23-38.119. of the Act or any other provision of law.

2700 Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until
2701 that section is amended, the state retirement system, state health insurance program, and state workers'
2702 compensation coverage program as they may be amended from time to time, shall continue to apply to
2703 and govern all eligible University employees. If, however, the University has been or is permitted by law
2704 other than the Act to establish an alternative health insurance plan or an alternative faculty retirement

plan or plans, such alternative health insurance or faculty retirement plan or plans shall apply to and govern the University employees included in such plan or plans.

The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the University to Classified Employees and Participating Covered Employees shall be the benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative University group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § 23-38.119 of the Act, they may be provided by the appropriate State programs, but no contributions to the State programs by the University shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in University employee benefit plans, other than Classified Employee benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for University employees other than Classified Employees.

Insurance and all proceeds there from provided pursuant to § 23-38.119 of the Act shall be exempt from legal process and may be subject to assignment as provided in subsection A of § 23-38.119.

D. Employee Relations.

1. General. The Systems shall contain provisions that protect the rights and privileges of University employees consistent with sound management principles and fair employment practice law.

2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.

3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.

4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the University, have been employed by the University for specified periods of time, or have retired from the University after lengthy service.

5. Counseling Services. The Systems shall provide counseling services through the State's Employee Assistance Program or a University Employee Assistance Program to any eligible University employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.

6. Unemployment Compensation. The Systems shall ensure that University employees receive the full unemployment compensation benefits to which they are legally entitled, and that the University's liability is limited to legitimate claims for such benefits.

7. Workers' Compensation. The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees' Workers Compensation Program administered by the Department of Human Resource Management.

8. Performance Planning and Evaluation. The Systems shall include one or more performance planning and evaluation processes for University employees that (i) establish and communicate the University's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all University employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of University employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, the existing merit-based performance management system for faculty shall continue, until amended by the University. On or after that Effective Date, nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.

9. Standards of Conduct and Performance. In order to protect the well-being and rights of all employees and to ensure safe, efficient University operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for University salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i) establish a uniform and objective process for correcting or

2766 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more
2767 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action
2768 to employee conduct occurring only when employees are at work or are otherwise representing the
2769 University in an official or work-related capacity, unless otherwise specifically provided by the policies
2770 of the Systems or other applicable law. The Systems may provide for a probationary period for new and
2771 re-employed University salaried nonfaculty employees, during which period the policies for corrective
2772 discipline shall not be applicable and the employee may not use the grievance procedure set forth in the
2773 next paragraph. The Systems may include separate rules of personal conduct and standards of
2774 acceptable work performance and policies for corrective discipline for reasonably distinguishable groups
2775 of University employees.

2776 10. *Grievance Procedure.* As provided in the Governing Law, employees shall be encouraged to
2777 resolve employment-related problems and complaints informally, and shall be permitted to discuss their
2778 concerns freely and without fear of retaliation with immediate supervisors and management. In the event
2779 that such problems cannot be resolved informally, all salaried nonfaculty University employees,
2780 regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in
2781 § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of
2782 the Code of Virginia, to the extent it was applicable to their classification of employees prior to the
2783 Effective Date of the University's initial Management Agreement with the Commonwealth. On that
2784 Effective Date, and until changed by the University, the faculty grievance procedures in effect
2785 immediately prior to the Effective Date shall continue.

2786 11. *Discrimination Complaints.* If a Classified Employee believes discrimination has occurred, the
2787 Classified Employee may file a complaint with the Department of Human Resource Management, Office
2788 of Equal Employment Services, with the appropriate University office, or with the appropriate federal
2789 agencies. All Participating Covered Employees and applicants for employment after the Effective Date of
2790 the University's initial Management Agreement with the Commonwealth shall file a complaint with the
2791 appropriate University office or with the appropriate federal agencies.

2792 12. *Layoff Policy.* The Systems shall include one or more layoff policies for salaried University
2793 employees who lose their jobs for reasons other than their job performance or conduct, such as a
2794 reduction in force or reorganization at the University. These University layoff policies shall govern such
2795 issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)
2796 notice to employees affected by a layoff, (iv) placement options within the University or its respective
2797 major divisions and within other parts of the University, (v) the preferential employment rights, if any,
2798 of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for
2799 recalling employees. In accordance with the terms of the Act, University employees who: (i) were
2800 employed prior to the Effective Date of the University's initial Management Agreement with the
2801 Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition
2802 Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated
2803 because of a reduction in force shall have the same preferential hiring rights with State agencies and
2804 other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of
2805 Virginia.

2806 Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 on State
2807 employees who were hired by a State agency or executive branch institution before the Effective Date of
2808 the University's initial Management Agreement with the Commonwealth and who were separated after
2809 that date by that State agency or executive branch institution because of a reduction in workforce. If the
2810 University has adopted a classification system pursuant to § 23- 38.116 of the Act that differs from the
2811 classification system administered by the Department of Human Resource Management, the University
2812 shall classify the separated employee according to its classification system and shall place the separated
2813 employee appropriately. The University may include separate policies for reasonably distinguishable
2814 groups of University employees. On or after the Effective Date of the University's initial Management
2815 Agreement with the Commonwealth, all employees from other State agencies and executive branch
2816 institutions who are placed by the University under the provisions of the State Layoff Policy shall be
2817 Participating Covered Employees.

2818 13. *Severance Benefits.* In accordance with the terms of the Act, the University shall adopt severance
2819 policies for salaried Participating Covered Employees who are involuntarily separated for reasons
2820 unrelated to performance or conduct. The terms and conditions of such policies shall be determined by
2821 the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to
2822 the Effective Date of the University's initial Management Agreement with the Commonwealth shall be
2823 covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of
2824 Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula
2825 according to which cash severance benefits may be converted to years of age or creditable service for
2826 Participating Covered Employees who participate in the Virginia Retirement System. An employee
2827 becoming, on such Effective Date, a Covered Employee shall not constitute a severance or reduction in

force to which severance or Workforce Transition Act policies would apply.

14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i) establish and maintain a work environment at the University that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the Virginia Polytechnic Institute and State University Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide University employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the University is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to University employees of the scope and content of the University alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License or the provision of patient care.

15. *Background Checks.* The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/ professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.

16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.

E. Leave and Release Time.

The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the University shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the University may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.

F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.

1. *Equal Employment Opportunity and Nondiscrimination.* The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of University employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

2. *Employment.* The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law. In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation.

On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. University Classified Employees who change jobs within the University through a

2889 competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a
2890 Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to
2891 become a Participating Covered Employee, that decision shall be irrevocable.

2892 3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable
2893 notice, where appropriate, of a decision either by the employee or by the University to separate the
2894 employee from the University in accordance with policies governing performance, conduct, or layoff.

2895 G. Information Systems.

2896 The University shall provide an electronic file transfer of information on all salaried University
2897 employees and shall continue to provide the Employee Position Reports to meet the human resources
2898 reporting requirements specified by law or by request of the Governor or the General Assembly, unless
2899 the University is specifically exempted from those requirements. The University shall conduct
2900 assessments to demonstrate its accountability for human resources practices that comply with laws and
2901 regulations. The Department of Human Resource Management and the University have entered into a
2902 Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to
2903 time by agreement of the parties, regarding the specific data and reporting requirements. The University
2904 shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department
2905 of Human Resources Management.

2906 VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND
2907 OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.

2908 On and after the Effective Date of its initial Management Agreement with the Commonwealth,
2909 University employees shall be subject to the terms and conditions of the Act and the Management
2910 Agreement between the Commonwealth and the University. Classified Employees shall continue to be
2911 subject to the human resources policies and exceptions to those policies adopted or approved by the
2912 Department of Human Resource Management. In addition, all University employees also shall remain
2913 subject to any other human resources policies adopted by the Board of Visitors applicable to University
2914 personnel unless University employees or a subset thereof are specifically exempted from those other
2915 human resources policies either by those other policies or by this Policy.

2916

2917

ATTACHMENT 3

2918

2919

Memorandum of Understanding

2920

Between Virginia Polytechnic Institute and State University and the

2921

Department of Human Resources Management Regarding

2922

The Reporting of Human Resources Management Data

2923

2924 This Memorandum of Understanding, which may be amended from time to time by the agreement of
2925 all parties, is an attachment to the Policy Governing Human Resources for Participating Covered
2926 Employees and Other University Employees pursuant to the Restructured Higher Education Financial
2927 and Administrative Operations Act of 2005, and is hereby entered into between Virginia Polytechnic
2928 Institute and State University and the Department of Human Resource Management (DHRM).

2928

2929 1. This document outlines the provisions for information management pertaining to human resources
2930 data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting
2931 requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so
2932 through efficient and cost-effective methods.

2932

2933 1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will
2934 be transmitted through an electronic file transfer to update DHRM's warehouse.

2934

2935 a. The University will provide a flat file of designated personnel data. For "Classified Employees",
2936 the data provided will match DHRM's data values for the designated fields. For salaried "Participating
2937 Covered Employees", the data provided will include the University's data values for the designated
2938 fields. The University will provide a data dictionary to DHRM. The file of designated data will be
2939 specifically described by an addendum to this Memorandum upon the agreement of the University and
2940 DHRM.

2940

2941 b. The University will provide a second flat file of salaried personnel actions for "Classified
2942 Employees" and salaried "Participating Covered Employees", such as promotions, separations, and
2943 salary adjustments. The file of relevant personnel actions and designated data to be provided for each
2944 action will be specifically described by an addendum to this Memorandum upon the agreement of the
2945 University and DHRM.

2945

2946 2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact
2947 analyses of employment and compensation actions that are part of the AAP, as demonstration of the
2948 University's compliance with relevant federal and state employment laws and regulations.

2948

2949 3. The University may key data into the Benefits Enrollment System or provide a batch file, or
2950 employees may use Employee Direct (employee self-service).

2950

4. Other reports to be provided by the University include the following:

- a. *Monthly Employee Position Report*
 b. *Annual report on salaried, wage, and contract employees*
The undersigned hereby agree to the provisions contained in the MOU.

APPROVALS:

Virginia Polytechnic Institute and State University:

By:Date.....
Executive Vice President & Chief Operating Officer

Department of Human Resources Management:

By:Date.....
Director, Department of Human Resource Management

EXHIBIT F

**MANAGEMENT AGREEMENT
 BETWEEN
 THE COMMONWEALTH OF VIRGINIA
 AND
 VIRGINIA POLYTECHNIC INSTITUTE
 AND STATE UNIVERSITY
 PURSUANT TO
 THE RESTRUCTURED HIGHER EDUCATION
 FINANCIAL AND ADMINISTRATIVE OPERATIONS
 ACT OF 2005**

**POLICY GOVERNING
 FINANCIAL OPERATIONS AND MANAGEMENT**

**THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
 AND STATE UNIVERSITY
 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT**

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations and management.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and State University.

"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University.

"Effective Date" means the effective date of the initial Management Agreement between the

3012 *University and the Commonwealth.*

3013 *"Management Agreement" means the agreement required by subsection D of § 23- 38.88 of the Act*
3014 *between the University and the Commonwealth of Virginia.*

3015 *"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section*
3016 *9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from*
3017 *general government funds, as defined in the December 20, 2004 Report to the Governor and General*
3018 *Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

3019 *"University" means Virginia Polytechnic Institute and State University, consisting of the University*
3020 *Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station*
3021 *Division (State Agency 229).*

3022 **III. SCOPE OF POLICY.**

3023 *This Policy applies to the University's responsibility for management, investment and stewardship of*
3024 *all its financial resources, including but not limited to, general, non-general and private funds. This*
3025 *responsibility includes maintaining an independent uniform system of accounting, financial reporting,*
3026 *and internal controls adequate to protect and account for the University's financial resources.*

3027 *Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the*
3028 *benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative*
3029 *Extension and the Agriculture Experiment Station Division , but Virginia Cooperative Extension and the*
3030 *Agriculture Experiment Station Division shall not receive any additional independent financial*
3031 *operations and management authority as a result of this Management Agreement beyond the*
3032 *independent financial operations and management authority that it had prior to the Effective Date of the*
3033 *University's initial Management Agreement with the Commonwealth or that it may be granted by law in*
3034 *the future.*

3035 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

3036 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*
3037 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*
3038 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*
3039 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*
3040 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*
3041 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*
3042 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*
3043 *and procedures.*

3044 **V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.**

3045 *The President, acting through the Executive Vice President and Chief Operating Officer, shall*
3046 *continue to be authorized by the Board to maintain existing and implement new policies governing the*
3047 *management of University financial resources. These policies shall continue to (i) ensure compliance*
3048 *with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting*
3049 *principles employed by the Commonwealth, including the use of fund accounting principles, with regard*
3050 *to the establishment of the underlying accounting records of the University and the allocation and*
3051 *utilization of resources within the accounting system, including the relevant guidance provided by the*
3052 *State Council of Higher Education for Virginia chart of accounts with regard to the allocation and*
3053 *proper use of funds from specific types of fund sources, (iii) provide adequate risk management and*
3054 *internal controls to protect and safeguard all financial resources, including moneys transferred to the*
3055 *University pursuant to a general fund appropriation, and ensure compliance with the requirements of*
3056 *the Appropriation Act.*

3057 *The financial management system shall continue to include a financial reporting system to satisfy*
3058 *both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,*
3059 *as specified in the related State Comptroller's Directives, and the University's separately audited*
3060 *financial statements. To ensure observance of limitations and restrictions placed on the use of the*
3061 *resources available to the University, the accounting and bookkeeping system of the University shall*
3062 *continue to be maintained in accordance with the principles prescribed for governmental organizations*
3063 *by the Governmental Accounting Standards Board.*

3064 *In addition, the financial management system shall continue to provide financial reporting for the*
3065 *President, acting through the Executive Vice President and Chief Operating Officer, and the Board of*
3066 *Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon*
3067 *the Effective Date of the initial Management Agreement between the University and the Commonwealth,*
3068 *except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the*
3069 *University shall not be required to record its financial transactions in the Commonwealth's Accounting*
3070 *and Reporting System ("CARS"), including the current monthly interfacing with CARS, or to record its*
3071 *financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in*
3072 *addition to CARS, but shall have its own financial reporting system. The University's financial reporting*
3073 *system shall provide (i) summary monthly reports for State agencies including, but not limited to, the*

Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

VI. FINANCIAL MANAGEMENT POLICIES.

The President, acting through the Executive Vice President and Chief Operating Officer, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia ("SCHEV") annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain financial incentives, including the interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General ("E&G") fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:

i) The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit;

ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below;

iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in

3135 subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes related
3136 to its mission. If public institutions of higher education of the Commonwealth are permitted, or the
3137 University in particular is permitted, by the Appropriation Act or other law to retain or be paid the
3138 interest the Commonwealth would have earned on sponsored programs and research funds, then this
3139 paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

3140 iv) If in any given year the University does not receive the certification from the State Council of
3141 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
3142 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall
3143 transfer to the general fund the balance in the escrow account as of June 30 of that year.

3144 v) Beginning on the effective date of its initial Management Agreement with the University until the
3145 beginning of the first fiscal year following the fiscal year for which it has received the required
3146 certification from SCHEV, the University shall continue to deposit tuition and all other non-general
3147 funds with the State Treasurer by the same process that it would have been required to use if it had not
3148 entered into a Management Agreement with the Commonwealth.

3149 vi) On the first business day of the first fiscal year following the fiscal year for which it has received
3150 the required certification from SCHEV, the University may draw down all cash balances held by the
3151 State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
3152 programs, auxiliary enterprises, and all other non-general fund revenues.

3153 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
3154 these funds to the University as specified in Section IX below.

3155 The University also shall have sum sufficient appropriation authority for all non-general funds as
3156 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
3157 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
3158 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
3159 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
3160 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
3161 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to
3162 the Department of Planning and Budget by July 31 of the subsequent fiscal year.

3163 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
3164 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
3165 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
3166 intent of the Commonwealth and the University that the University shall be exempt from the revenue
3167 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
3168 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
3169 University that the University shall be entitled to retain non-general fund savings generated from
3170 changes in Commonwealth rates and charges, including but not limited to health, life, and disability
3171 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
3172 reverting such savings back to the Commonwealth. This financial resource policy assists the University
3173 by providing the framework for retaining and managing non-general funds, for the receipt of general
3174 funds, and for the use and stewardship of all these funds.

3175 The President, acting through the Executive Vice President and Chief Operating Officer, shall
3176 continue to provide oversight of the University's cash management system which is the framework for
3177 the retention of non-general funds. The Internal Audit Department of the University shall periodically
3178 audit the University's cash management system in accordance with appropriate risk assessment models
3179 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight
3180 shall continue to be provided through the annual audit and assessment of internal controls performed by
3181 the Auditor of Public Accounts. For the receipt of general and non-general funds, the University shall
3182 conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code
3183 of Virginia as it currently exists and from time to time may be amended.

3184 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

3185 The President, through the Executive Vice President and Chief Operating Officer, shall continue to
3186 be authorized to create and implement any and all Accounts Receivable Management and Collection
3187 policies as part of a system for the management of University financial resources. The policies shall be
3188 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the
3189 Code of Virginia such that the University shall take all appropriate and cost effective actions to
3190 aggressively collect accounts receivable in a timely manner.

3191 These shall include, but not be limited to, establishing the criteria for granting credit to University
3192 customers; establishing the nature and timing of collection procedures within the above general
3193 principles; and the independent authority to select and contract with collection agencies and, after
3194 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all
3195 collection activities for all University accounts receivable such as reporting delinquent accounts to
3196 credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In

accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.

IX. DISBURSEMENT MANAGEMENT.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in accordance with the following schedule: i) the University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50 percent of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;

ii) the University may draw down the sum of all tuition and E&G fees and all other nongeneral revenues deposited to the State Treasury each day on the same business day they were deposited; and

iii) the University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.

X. DEBT MANAGEMENT.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.

Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,

3258 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury
 3259 Board, and that are consistent with debt capacity and management policies and guidelines established
 3260 by its Board of Visitors, without obtaining the consent of any legislative body, elected official,
 3261 commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without
 3262 any proceedings or conditions other than those specifically required by Subchapter 3 of the Act;
 3263 provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds
 3264 pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any
 3265 new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for
 3266 review and comment prior to its adoption by the University.

3267 The University recognizes that there are numerous types of financing structures and funding sources
 3268 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by
 3269 the President, acting through the Executive Vice President and Chief Operating Officer, within the
 3270 context of the overall portfolio to ensure that any financial product or structure is consistent with the
 3271 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the
 3272 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a
 3273 full understanding of the transaction, including (i) the identification of potential risks and benefits, and
 3274 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or
 3275 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be
 3276 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

3277 XI. INVESTMENT POLICY.

3278 It is the policy of the University to invest its operating and reserve funds solely in the interest of the
 3279 University and in a manner that will provide the highest investment return with the maximum security
 3280 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
 3281 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence
 3282 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity
 3283 and familiar with such matters would use in the conduct of an enterprise of a like character and with
 3284 like aims.

3285 Endowment investments shall be invested and managed in accordance with the Uniform Management
 3286 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

3287 The Board of Visitors shall periodically review and approve the investment guidelines governing the
 3288 University's operating and reserve funds.

3289 XII. INSURANCE AND RISK MANAGEMENT.

3290 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any
 3291 intent during the next biennium to withdraw from any insurance or risk management program made
 3292 available to the University through the Commonwealth's Division of Risk Management and in which the
 3293 University is then participating, to enable the Commonwealth to complete an adverse selection analysis
 3294 of any such decision and to determine the additional costs to the Commonwealth that would result from
 3295 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University
 3296 proceeds to withdraw from the insurance or risk management program, the University shall reimburse
 3297 the Commonwealth for all such additional costs attributable to such withdrawal as determined by the
 3298 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University
 3299 and the Commonwealth.

3300
 3301 **2. That the following Chapter 2 shall hereafter be known as the "2006 Management Agreement**
 3302 **Between the Commonwealth of Virginia and The College of William and Mary in Virginia":**

3303 CHAPTER 2.

3304 MANAGEMENT AGREEMENT

3305 BY AND BETWEEN

3306 THE COMMONWEALTH OF VIRGINIA

3307 AND

3308 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

3310 This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the
 3311 Commonwealth of Virginia (hereafter, the "Commonwealth") and The College of William and Mary in
 3312 Virginia (hereafter, "the College") provides as follows:

3313 RECITALS

3314 WHEREAS the College has satisfied the conditions precedent set forth in subsections A and B of
 3315 § 23-38.97 of the Code of Virginia to become a public institution of higher education of the
 3316 Commonwealth governed by Subchapter 3 (§ 23-38.91 et seq.) of the Restructured Higher Education
 3317 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code
 3318 of Virginia ("Subchapter 3" and the "Act," respectively), as evidenced by:

3319 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the College

held on April 22, 2005, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subsection A 1 of § 23-38.97 of the Act;

2. Written Application to the Governor. The College has submitted to the Governor a written Application, dated November 2, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the College is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the College has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and

3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act the Governor has found that the College has fulfilled the requirements of subsection A 2 of §23-38.97, and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the College; and

WHEREAS, the College is therefore authorized to enter into this Management Agreement as provided in subsection D of § 23-38.88 and Subchapter 3 of the Act.

AGREEMENT

NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the College do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement."

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William and Mary in Virginia and the Virginia Institute of Marine Science.

"College" means the College of William and Mary in Virginia (state agency 204) and the Virginia Institute of Marine Science (state agency 268).

"Covered Employee" means any person who is employed by the College on either a salaried or wage basis.

"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.

"Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.

"Management Agreement" means this agreement between the Commonwealth of Virginia and the College as required by subsection D of § 23-38.88 and Subchapter 3 of the Act.

"Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the College.

"Public institution of higher education" means those two-year and four-year institutions enumerated in § 23-14 of the Code of Virginia.

ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability. Subchapter 3 of the Act provides that, upon the execution of, and as of the effective date for, this Management Agreement, the College shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.

SECTION 2.1.1. Assessments and Accountability. The College and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors polices attached hereto as Exhibits G through L, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or

3381 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or
3382 Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by
3383 law other than the Act.

3384 SECTION 2.1.2. *Express Grant of Powers and Authority.* Subject to the specific conditions and
3385 limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement;
3386 Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth
3387 and the College agree that the Commonwealth has granted to the College by this Management
3388 agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of
3389 the College attached hereto as Exhibits G through L and governing (1) the undertaking and
3390 implementation of capital projects, and other acquisition and disposition of property (Exhibit G), (2) the
3391 leasing of property, including capital leases (Exhibit H), (3) information technology (Exhibit I), (4) the
3392 procurement of goods, services, including certain professional services, insurance, and construction
3393 (Exhibit J), (5) human resources (Exhibit K), and (6) its system of financial management (Exhibit L),
3394 including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to establish tuition,
3395 fees, room, board, and other charges consistent with sum sufficient appropriation authority for
3396 non-general funds as provided by the Governor and the General Assembly in the Commonwealth's
3397 biennial appropriations authorization. Subject to the specific conditions and limitations contained in
3398 Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement,
3399 and in one or more of the Board of Visitors policies attached hereto as Exhibits G through L, the
3400 Commonwealth and the College agree that the Commonwealth has expressly granted to the College all
3401 the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of
3402 the Act.

3403 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
3404 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
3405 of, this Management Agreement and the policies adopted by it and attached as Exhibits G through L.
3406 Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally
3407 permissible procedures, specifically delegate the duties and responsibilities set forth in this Management
3408 Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the
3409 Board and attached hereto as Exhibits G through L, to a person or persons within the College.

3410 SECTION 2.1.3. *Reimbursement by the College of Certain Costs.* By July 1 of each odd-numbered
3411 year, the College shall inform the Secretary of Finance of any intent during the next biennium to
3412 withdraw from any health or other group insurance or risk management program made available to the
3413 College through any agency, body corporate, political subdivision, authority, or other entity of the
3414 Commonwealth, and in which the College is then participating, to enable the Commonwealth's actuaries
3415 to complete an adverse selection analysis of any such decision and to determine the additional costs to
3416 the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs
3417 to the Commonwealth, the College proceeds to withdraw from such health or other group insurance or
3418 risk management program, the College shall, pursuant to subdivision D 2 c of § 23-38.88, reimburse the
3419 Commonwealth for all such additional costs attributable to such withdrawal as determined by the
3420 Commonwealth's actuaries.

3421 SECTION 2.1.4. *Potential Impact on Virginia College Savings Plan.* As required by subsection D 2
3422 c of § 23-38.88 of the Act, the College has given consideration to potential future impacts of tuition
3423 increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has discussed
3424 those potential impacts with the Executive Director and staff of that Plan and with parties in the
3425 Administration who participated in the development of this Management Agreement. The Executive
3426 Director of the Plan has provided to the College and the Commonwealth the Plan's assumptions
3427 underlying the contract pricing of the program.

3428 SECTION 2.1.5. *Justification for Deviations from the Virginia Public Procurement Act.* Pursuant to
3429 § 23-38.110 of the Act and subject to the provisions of this Management Agreement, the College may be
3430 exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43 (§ 2.2-4300 et
3431 seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA
3432 must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors
3433 shall adopt and comply with procurement policies that are based upon competitive principles and seek
3434 competition to the maximum practical degree. The Policy Governing the Procurement of Goods,
3435 Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules
3436 Governing Procurement of Goods, Services, Insurance, and Construction (the "Procurement Rules")
3437 attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA
3438 required by subsections A and B of § 23-38.110 of the Act.

3439 Subsection D of § 23-38.110 of the Act requires that the College identify the public, educational, and
3440 operational interests served by any procurement rule or rules that deviate from those in the VPPA. The
3441 adopted Board of Visitors policy on procurement and the Procurement Rules provide the College with
3442 the autonomy to administer its procurement process while fully adhering to the principle that

competition should be sought to the maximum extent feasible. This autonomy will better position the College to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the College to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the College's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the College and public sector suppliers.

SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the College, the parties agree that the College is not in a position to quantify any such cost savings at this time, although the College expects that there will be cost savings resulting from the additional authority granted to the College pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.

SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the College shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq. of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.

SECTION 2.1.8. Implied Authority. Pursuant to subsection D 1 of § 23-38.88 of the Act, the only implied authority granted to the College by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the College's Board of Visitors and attached hereto as Exhibits G through L.

SECTION 2.1.9. Exercise of Authority. The College and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the College the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the College shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement, the policies adopted by its Board of Visitors attached hereto as Exhibits G through L, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through L.

The College and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of the College shall assume full responsibility for management of the College, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of the College as provided in the Act, (b) meeting the requirements of §§ 2.2-5004, 23-9.2:3.02, and 23-9.6:1.01 of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.

SECTION 2.2. State Goals.

SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § 23-38.88, prior to August 1, 2005, the Board of Visitors of the College adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B. In addition to the above commitments, the College commits to furthering these State goals by:

1. In addition to its six-year target of achieving \$68 million in external research by 2011-12, the

3504 College, including the Virginia Institute of Marine Science, commits to match from institutional funds,
3505 other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided
3506 by the State in the Appropriation Act above the amount provided from institutional funds for research in
3507 2005-06.

3508 2. In a concerted effort to provide educational opportunities to Virginia students attending
3509 institutions in the Virginia Community College System ("VCCS") and Richard Bland College, the
3510 College commits to work with Virginia Polytechnic Institute and State University ("Virginia Tech") and
3511 the University of Virginia to establish a program under which these three institutions will increase
3512 significantly the number of such students transferring to their institutions. Specifically, pursuant to this
3513 program, the College, Virginia Tech and the University of Virginia collectively commit to enroll as
3514 transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not
3515 less than approximately 300 new such transfer students each year over the number enrolled in 2004-05,
3516 for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not
3517 less than approximately 650 new such transfer students each year over the number enrolled in 2004-05,
3518 for a total of approximately 1,250 such transfer students each year. The three institutions have agreed
3519 that they will mutually determine how to divide the responsibility for these additional transfer students
3520 equitably among themselves.

3521 3. As an institutional priority and obligation, the College commits to the Governor and General
3522 Assembly to work meaningfully and visibly with an economically distressed region or local area of the
3523 Commonwealth, not smaller in size than a city or county, which lags the Commonwealth in education,
3524 income, employment, and other factors. The College commits to establish a formal partnership with that
3525 area to develop jointly a specific action plan that builds on the College's programmatic strengths and
3526 uses the College's faculty, staff and, where appropriate, student expertise to stimulate economic
3527 development in the area to make the area more economically viable, and to improve student
3528 achievement and teacher and administrator skill sets in a school, schools, or the school system in that
3529 area. The College shall submit the action plan to the Governor and General Assembly by no later than
3530 December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each
3531 year on its progress in implementing the action plan during the prior fiscal year.

3532 SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the
3533 Code of Virginia, the College, along with all other public institutions of higher education of the
3534 Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia
3535 ("SCHEV") by October 1, 2005, an institution-specific Six-Year Plan addressing the College's academic,
3536 financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12.
3537 Subsection A of § 23-9.2:3.02 requires the College to update this Six-Year Plan by October 1 of each
3538 odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement
3539 address, among other issues, such matters as the College's in-state undergraduate student enrollment, its
3540 financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students.
3541 These matters are addressed below and in the College's Six-Year Plan submitted to SCHEV, and the
3542 parties therefore agree that the College's Six-Year Plan and the description below meet the requirement
3543 of subsection B of § 23-38.97 of the Act.

3544 Subsection B of § 23-38.104 of the Act requires the Board of Visitors of the College to include in
3545 this Management Agreement the College's commitment to provide need-based grant aid for middle- and
3546 lower-income Virginia students in a manner that encourages student enrollment and progression without
3547 respect to potential increases in tuition and fees. The College's commitment in this regard is clear.

3548 The College of William and Mary, under the leadership of its new president, has set as a goal
3549 increasing the economic and social diversity of the student body at the College. The College is
3550 absolutely committed to assuring access to any qualified and admitted Virginian regardless of family
3551 income. The primary initiative in this area is Gateway William and Mary, which shall be substantially
3552 as described in the remainder of this Section 2.2.2, as may amended from time to time by the Board of
3553 Visitors of the College and reported to the Secretaries of Finance and Education and the Chairmen of
3554 the Senate Committee on Finance and the House Committee on Appropriations.

3555 At the present time, any needy Virginian at the College receives a combination of grants and loans
3556 so that his or her indebtedness will not exceed one year's cost of education. This is as generous as any
3557 other public institution in the state or region. Nonetheless, this means that many needy Virginians,
3558 including those with low family incomes, will graduate with more than \$16,000 in indebtedness. This
3559 burdensome level of debt may discourage students from lower SES groups from applying to or accepting
3560 admission from the College. And, if they do attend, their legitimate concern with respect to debt
3561 repayment may discourage them from some career choices like K-12 education or from going on to
3562 graduate or professional school for fear of adding even more to their personal indebtedness. Hence,
3563 over the period of the six-year plan, the College of William and Mary is committed to seeking, from all
3564 sources - state-appropriated scholarship funds, federal, and private support — sufficient funds to assure
3565 that 1) we meet 100% of financial need for in-state undergraduates and 2) any student whose family's

annual income is less than \$40,000 can spend four years at the College and graduate debt-free. The Gateway William and Mary initiative is one of the highest priorities for our new president. In addition, both through our goal to increase the numbers of VCCS graduates who transfer to the College and aggressive efforts to recruit in-state students from lower SES groups, we hope to double the number of students who would receive assistance through the Gateway initiative from 280 students to 560 students by the end of the six-year planning period.

As noted, we will continue our commitment to providing additional financial aid through grants and loans to those Virginians whose families are not in the lower SES groups, but who still have demonstrable need. Currently approximately 900 in-state undergraduate students receive need-based aid. The College commits to meeting 100% of the need for these students consistent with the federal definition of unmet needs over the six year planning period. In addition, as tuition and fees increase over the period of the six-year plan, we will readjust the level of financial aid for all students to assure that insufficiency of family resources will not be a barrier to attending the College.

The Commonwealth and the College agree that this commitment meets the requirements of subsection B of § 23-38.104 of the Act.

SECTION 2.3. Authority Granted to the Virginia Institute of Marine Science. The Virginia Institute of Marine Science (hereafter, "the Institute") shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits G through L are implemented by the College on behalf of the Institute, but the Institute shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.

SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, the College shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and the College's Enabling Legislation.

SECTION 2.4.1. The Appropriation Act. The Commonwealth and the College agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits G through L, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.

SECTION 2.4.2. The College's Enabling Legislation. As provided in subsection C of § 23-38.91 of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the College's Enabling Legislation, the Enabling Legislation shall control.

SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § 23-38.92 of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to the College as provided by the express terms of this Management Agreement. As further provided in subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.

SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of § 23-38.93 of the Act, for purposes of §§ 2.2-5004, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.2:1, 23-3, 23-4.2, 23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2, 23-9.2:3, 23-9.2:3.02, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, and Chapter 4.9 (§ 23-38.75 et seq.) of the Code of Virginia, the College shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, the College shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.), Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.), Chapter 4.4 (§ 23-38.45 et seq.), Chapter 4.4:1 (§ 23-38.53:1 et seq.), Chapter 4.4:2 (§ 23-38.53:4 et seq.), Chapter 4.4:3 (§ 23-38.53:11), Chapter 4.4:4 (§ 23-38.53:12 et seq.), Chapter 4.5 (§ 23-38.54 et seq.), Chapter 4.7 (§ 23-38.70 et seq.), Chapter 4.8 (§ 23-38.72 et seq.), and Chapter 4.9 (§ 23-38.75 et seq.), unless and until provided otherwise by law other than the Act.

SECTION 2.4.5. Public Access to Information. As provided in § 23-38.95 of the Act, the College shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct

business pursuant to § 2.2-3709 if expressly named therein and, in all cases, may conduct business as a "state public body" for purposes of subsection B of § 2.2-3708.

SECTION 2.4.6. *Conflicts of Interests.* As provided in § 23-38.96 of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the College and to its Covered Employees.

SECTION 2.4.7. *Other Provisions of the Code of Virginia.* Other than as specified above, any other powers and authorities granted to the College pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits G through L.

ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.

SECTION 3.1. *Amendments.* Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through L shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the College's website. The change or deviation shall become effective unless one of the above persons notifies the College in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to subsection D 4 of § 23-38.88 of the Act.

SECTION 3.2. *Right and Power to Void, Revoke, or Reinstate Management Agreement.*

SECTION 3.2.1. *Governor.* Pursuant to subsection D 4 of § 23-38.88, and § 23-38.98, of the Act, if the Governor makes a written determination that the College is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the College and to the members of the General Assembly, and (ii) the College shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the College, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, the College shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the College has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.

SECTION 3.2.2. *General Assembly.* As provided in subsection D 4 of § 23-38.88 of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § 23-38.98 of the Act, the College's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if the College fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the College fails to meet the requirements of this Management Agreement.

ARTICLE 4. GENERAL PROVISIONS.

SECTION 4.1. *No Third-Party Beneficiary Status.* Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.

SECTION 4.2. *Sovereign Immunity.* Pursuant to subsection E of § 23-38.88 of the Act, the College and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the College were not governed by the Act; provided that the Virginia Tort Claims Act, § 8.01-195.1 et seq. of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to the College.

SECTION 4.3. *Term of Agreement.* This Management Agreement shall expire at midnight on June 30, 2010.

WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of the legislation enacted into law providing for the terms of such Agreement.

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EXHIBIT G

MANAGEMENT AGREEMENT

BETWEEN
 THE COMMONWEALTH OF VIRGINIA
 AND
 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA
 PURSUANT TO
 THE RESTRUCTURED HIGHER EDUCATION
 FINANCIAL AND ADMINISTRATIVE OPERATIONS
 ACT OF 2005

 POLICY GOVERNING CAPITAL PROJECTS

 THE RECTOR AND VISITORS OF
 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA
 POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College of William & Mary in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the College of William & Mary in Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

"Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

"College" means the College of William & Mary in Virginia, state agency 204, and the Virginia Institute of Marine Science, state agency 268.

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3.

"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section

HOUSE SUBSTITUTE

HB1502H1

3750 9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from
3751 general government funds, as defined in the December 20, 2004 Report to the Governor and General
3752 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

3753 **III. SCOPE OF POLICY.**

3754 This Policy applies to the planning and budget development for capital projects, capital project
3755 authorization, and the implementation of capital projects, whether funded by a general fund
3756 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
3757 sources.

3758 This Policy provides guidance for 1) the process for developing one or more capital project
3759 programs for the College, 2) authorization of new capital projects, 3) procurement of Capital
3760 Professional Services and construction services, 4) design reviews and code approvals for capital
3761 projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land
3762 acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting
3763 requirements.

3764 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

3765 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
3766 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
3767 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
3768 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
3769 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
3770 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
3771 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
3772 and procedures.

3773 **V. CAPITAL PROGRAM.**

3774 The President shall adopt a system for developing one or more capital project programs that defines
3775 or define the capital needs of the College for a given period of time consistent with the College's
3776 published Master Plan. This process may or may not mirror the **Commonwealth's** requirements for
3777 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major
3778 Capital Projects that are to be funded entirely or in part by a general fund appropriation of the
3779 General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's
3780 requirements for capital plans. The Board may approve amendments to the program for Major Capital
3781 Projects annually or more often if circumstances warrant.

3782 It shall be College policy that each capital project program shall meet the College's mission and
3783 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College
3784 policy that each capital project shall be **of a size and scope** to provide for the defined program needs,
3785 designed in accordance with all applicable building codes and handicapped accessibility standards as
3786 well as the College's design guidelines and standards, and costed to reflect current costs and escalated
3787 to the mid-point of anticipated construction.

3788 **VI. AUTHORIZATION OF CAPITAL PROJECTS**

3789 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
3790 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for
3791 approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that
3792 are to be funded entirely or in part by a general fund appropriation of the General Assembly or
3793 proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those
3794 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the
3795 State's process for capital budget requests.

3796 It shall be the policy of the College that the implementation of capital projects shall be carried out
3797 so that the capital project as completed is the capital project approved by the Board for Major Capital
3798 Projects and according to the procedures adopted by the President, acting through his designee, for all
3799 other capital projects. The President shall ensure strict adherence to this requirement.

3800 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond
3801 the plans and justifications that were the basis for the capital project's approval, either before or during
3802 construction, unless approved in advance as described above. Minor changes shall be permissible if
3803 they are determined by the President, acting through his designee, to be justified.

3804 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must
3805 include a statement of urgency if not part of the approved Major Capital Project program.

3806 **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

3808 It shall be the policy of the College that procurements shall result in the purchase of high quality
3809 services and construction at reasonable prices and shall be consistent with the Policy Governing the
3810 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials
3811 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and

Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed to:

Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;

Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or College policy;

Making procurement rules clear in advance of any competition;

Providing access to the College's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the College;

Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations;

Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

The President, acting through his designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the College. The procedures shall implement this Policy and provide for:

A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

A prequalification procedure for contractors or products;

A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and

A prompt payment procedure.

The College also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the College, the purposes of this Policy will be furthered.

VIII. DESIGN REVIEWS AND CODE APPROVALS.

The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through his designee, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the College's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code ("VUSBC") standards and the applicable accessibility code.

The President shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the College Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the College Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the College on the same capital project.

3873 **IX. ENVIRONMENTAL IMPACT REPORTS.**

3874 *It shall be the policy of the College to assess the environmental, historic preservation, and*
3875 *conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts*
3876 *to the extent practicable. The College shall develop a procedure for the preparation and approval of*
3877 *environmental impact reports for capital projects, in accordance with State environmental, historic*
3878 *preservation, and conservation requirements generally applicable to capital projects otherwise meeting*
3879 *the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of*
3880 *\$300,000 or more.*

3881 **X. BUILDING DEMOLITIONS.**

3882 *It shall be the policy of the College to consider the environmental and historical aspects of any*
3883 *proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.*
3884 *The College shall develop a procedure for the preparation and review of demolition requests, including*
3885 *any necessary reviews by the Department of Historic Resources and the Art and Architectural Review*
3886 *Board in accordance with State historic preservation requirements generally applicable to capital*
3887 *projects in the Commonwealth. Further, for any property that was acquired or constructed with funding*
3888 *from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported*
3889 *Debt, general laws applicable to State owned property shall apply.*

3890 **XI. BUILDING OR LAND ACQUISITIONS.**

3891 *It is the policy of the College that capital projects involving building or land acquisition shall be*
3892 *subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real*
3893 *property. The President, acting through his designee, shall ensure that the project management system*
3894 *implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters*
3895 *relating to the acquisition of buildings and land as any prudent purchaser would perform to the end*
3896 *that any building or land acquired by the College shall be suitable for its intended purpose, that the*
3897 *acquisition can be made without substantial risk of liability to the College and that the cost of the real*
3898 *property to be acquired, together with any contemplated development thereof, shall be such that*
3899 *compliance with the provisions of Section VI of this Policy is achieved. In addition, the President,*
3900 *acting through his designee, shall ensure that, where feasible and appropriate to do so, the following*
3901 *specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

3902 **A. Environmental and Land Use Considerations.**

3903 *It is the policy of the College to reasonably cooperate with each locality affected by the acquisition.*
3904 *Such cooperation shall include but not be limited to furnishing any information that the locality may*
3905 *reasonably request and reviewing any requests by the locality with regard to any such acquisition. The*
3906 *College shall consider the zoning and comprehensive plan designation by the locality of the building or*
3907 *land and surrounding parcels, as well as any designation by State or federal agencies of historically or*
3908 *archeologically significant areas on the land. Nothing herein shall be construed as requiring the*
3909 *College to comply with local zoning laws and ordinances.*

3910 **B. Infrastructure and Site Condition.**

3911 *The President, acting through his designee, shall ensure that, in the case of capital projects involving*
3912 *the acquisition of buildings or land, the project management systems implemented under Section XIII*
3913 *below provide for a review of the following matters prior to acquisition of the building or land: that any*
3914 *land can be developed for its intended purpose without extraordinary cost; that an environmental*
3915 *engineer has been engaged by the College to provide an assessment of any environmental conditions on*
3916 *the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the*
3917 *building or land; that utilities and other services to the land are adequate or can reasonably be*
3918 *provided or have been provided in the case of building acquisitions; and that the condition and grade of*
3919 *the soils have been examined to determine if any conditions exist that would require extraordinary site*
3920 *work or foundation systems.*

3921 **C. Title and Survey.**

3922 *A survey shall be prepared for any real property acquired, and an examination of title to the real*
3923 *property shall be conducted by a licensed attorney or, in the alternative, a commitment for title*
3924 *insurance shall be procured from a title insurance company authorized to do business in the*
3925 *Commonwealth. Based upon the survey and title examination or report, the President, acting through*
3926 *his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed*
3927 *to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements*
3928 *or other matters that may have a significant adverse effect upon the College's ability to own, occupy,*
3929 *convey or develop the real property.*

3930 **D. Appraisal.**

3931 *An appraisal shall be conducted of the real property to be acquired to determine its fair market*
3932 *value and the consistency of the fair market value with the price agreed upon by the College.*

3933 **XII. BUILDING OR LAND DISPOSITIONS.**

3934 *The Board of Visitors shall approve the disposition of any building or land. Disposition of land or*

buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the College's Enabling Legislation.

XIII. PROJECT MANAGEMENT SYSTEMS.

The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management authority to appropriate College officials, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate.

The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to College buildings and grounds.

The project management systems may include one or more reporting systems applicable to capital projects whereby College officials responsible for the management of such projects provide appropriate and timely reports to the President on the status of such projects during construction.

XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the College's project management systems, as described in Section XIII above, the College shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through his designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

EXHIBIT H

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COLLEGE OF WILLIAM & MARY IN VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING LEASES OF REAL PROPERTY

THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM & MARY IN VIRGINIA POLICY GOVERNING LEASES OF REAL PROPERTY

I. PREAMBLE.

In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the College of William & Mary in Virginia, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College may have the authority to establish its own system for the leasing of real property. The College's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the College.

This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act

3996 and the College's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this
3997 Policy.

3998 *II. DEFINITIONS.*

3999 The following words and terms, when used in this Policy, shall have the following meaning unless
4000 the context clearly indicates otherwise:

4001 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
4002 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

4003 "Board of Visitors" means the Rector and Visitors of the College of William & Mary in Virginia.

4004 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting
4005 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

4006 "College" means the College of William & Mary in Virginia, state agency 204, and the Virginia
4007 Institute of Marine Science, state agency 268.

4008 "Covered Institution" means a public institution of higher education of the Commonwealth of
4009 Virginia that has entered into a Management Agreement with the Commonwealth to be governed by
4010 Subchapter 3 of the Act.

4011 "Expense Lease" means an Operating Lease of real property under the control of another entity to
4012 the College.

4013 "Income Lease" means an Operating Lease of real property under the control of the College to
4014 another entity.

4015 "Lease" or "Leases" means any type of lease involving real property.

4016 "Operating Lease" means any lease involving real property, or improvements thereon, that is not a
4017 Capital Lease.

4018 *III. SCOPE OF POLICY.*

4019 This Policy provides guidance for the implementation of all College Leases.

4020 *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

4021 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
4022 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
4023 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
4024 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
4025 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
4026 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
4027 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
4028 and procedures.

4029 *V. REQUIREMENTS FOR LEASES.*

4030 *A. Factors to Be Considered When Entering into Leases.*

4031 All Leases shall be for a purpose consistent with the mission of the College. The decision to enter
4032 into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy,
4033 consideration of all costs of occupancy, and a determination that the use of the property to be leased is
4034 necessary and is efficiently planned. Leases shall also conform to the space planning procedures that
4035 may be adopted by the President, acting through his designee, to ensure that the plan for the space to
4036 be leased is consistent with the purpose for which the space is intended.

4037 *B. Competition to Be Sought to Maximum Practicable Degree.*

4038 Competition shall be sought to the maximum practicable degree for all Leases. The President, acting
4039 through his designee, is authorized to ensure that Leases are procured through competition to the
4040 maximum degree practicable and to determine when, under guidelines that may be developed and
4041 adopted by the President, acting through his designee, it is impractical to procure Leases through
4042 competition.

4043 *C. Approval of Form of Lease Required.*

4044 The form of Leases entered into by the College shall be approved by the College's legal counsel.

4045 *D. Execution of Leases.*

4046 All Leases entered into by the College shall be executed only by those College officers or persons
4047 authorized by the President or as may subsequently be authorized by the Board of Visitors, and subject
4048 to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the
4049 College's Policy Governing Capital Projects adopted by the Board as part of the Management
4050 Agreement between the Commonwealth and the College, no other College approval shall be required for
4051 leases or leasing, nor state approval required except in the case of leases of real property as may be
4052 governed by general state law in accordance with § 23-38.109 and § 23-38.112 of the Act.

4053 *E. Capital Leases.*

4054 The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization
4055 process included in the Policy Governing Capital Projects adopted by the Board as part of the
4056 Management Agreement between the Commonwealth and the College.

4057 *F. Compliance with Applicable Law.*

All Leases of real property by the College shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.

G. Certification of Occupancy.

All real property covered by an Expense Lease or leased by the College under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.

EXHIBIT I

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

*PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT
OF 2005*

POLICY GOVERNING INFORMATION TECHNOLOGY

THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM & MARY IN VIRGINIA POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between the Commonwealth and the College of William & Mary in Virginia that incorporates this Policy.

The Board of Visitors of the College is authorized to adopt this Information Technology Policy pursuant to § 23-38.111 of the Code of Virginia.

II. DEFINITIONS.

As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William & Mary in Virginia.

"College" means the College of William & Mary in Virginia, State Agency 204, and the Virginia Institute of Marine Science, State Agency 268.

"Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

"Major information technology project" or "major IT project" shall have the same meaning as set forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

"Policy" means this Information Technology Policy adopted by the Board of Visitors.

"State Chief Information Officer" or "State CIO" means the Chief Information Officer of the Commonwealth of Virginia.

III. SCOPE OF POLICY.

This Policy is intended to cover and implement the authority that may be granted to the College pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the College pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the College's enabling legislation as that term is defined in § 23-38.89 of the Act.

This Policy shall govern the College's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and

audits conducted within, by, or on behalf of the College. Upon the effective date of a Management Agreement between the Commonwealth and the College, as authorized by subsection D of § 23-38.88 and § 23-38.111, therefore, the College shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the College's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College; provided, however, that the College still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the College.

The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.

IV. GENERAL PROVISIONS.

A. Board of Visitors Accountability and Delegation of Authority.

The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.

B. Strategic Planning.

The President shall be responsible for overall IT strategic planning at the College, which shall be linked to and in support of the College's overall strategic plan.

At least 45 days prior to each fiscal year, the President shall make available the College's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the College's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § 2.2-2007 of the Code of Virginia and into which the College's plan is to be incorporated.

C. Expenditure Reporting and Budgeting .

The President shall approve and be responsible for overall IT budgeting and investments at the College. The College's IT budget and investments shall be linked to and in support of the College's IT strategic plan, and shall be consistent with general College policies, the Board-approved annual operating budget, and other Board approvals for certain procurements.

By October 1 of each year, the President shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures.

The College shall be specifically exempt from:

Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget requests) as it currently exists and from time to time may be amended;

§§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as they currently exist and from time to time may be amended; and

any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.

D. Project Management.

Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the College. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.

The President, acting through his designee, shall oversee the management of all College IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects

shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.

On a quarterly basis, the President, acting through his designee, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the College's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.

The President shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.

The College shall be specifically exempt from:

§ 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management) as it currently exists and from time to time may be amended;

§§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management) as they currently exist and from time to time may be amended; and

any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.

The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the College with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.

E. Infrastructure, Architecture, Ongoing Operations, and Security.

Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the College. Copies of the policies shall be made available to the Information Technology Investment Board.

The President, acting through his designee, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.

For purposes of implementing this Policy, the President shall appoint an existing College employee to serve as a liaison between the College and the State CIO.

F. Audits.

Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing association, appropriately tailored to the specific circumstances of the College, which provide for Independent Validation and Verification ("IV&V") of the College's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.

Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the College's Internal Audit Department and the Auditor of Public Accounts.

EXHIBIT J

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COLLEGE OF WILLIAM & MARY IN VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING THE PROCUREMENT OF GOODS, SERVICES, INSURANCE, AND CONSTRUCTION AND THE DISPOSITION OF SURPLUS MATERIALS

*THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM & MARY
POLICY GOVERNING THE PROCUREMENT OF
GOODS, SERVICES, INSURANCE AND CONSTRUCTION
AND THE DISPOSITION OF SURPLUS MATERIALS*

I. PREAMBLE.

A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that the College of William & Mary in Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the College.

C. This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the College's Enabling Legislation are not affected by this Policy.

II. DEFINITIONS.

As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement".

"Board of Visitors" means the Rector and Visitors of the College of William & Mary in Virginia.

"College" means the College of William & Mary in Virginia, state agency 204, and the Virginia Institute of Marine Science, state agency 268.

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Effective Date" means the effective date of the Management Agreement.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.

"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 between the Commonwealth of Virginia and the College of William & Mary in Virginia.

"Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction" attached to this Policy as Attachment 1.

"Services" as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.

"Surplus materials" means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the College.

III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.

IV. GENERAL PROVISIONS.

A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement

4304 Policies.

4305 The College has had decentralization and pilot program autonomy in many procurement functions
4306 and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy
4307 previously granted to the College in Item 330 E of the 1994 Appropriation Act. This Policy therefore is
4308 adopted by the Board of Visitors to enable the College to develop a procurement system, as well as a
4309 surplus materials disposition system. Any College electronic procurement system shall integrate or
4310 interface with the Commonwealth's electronic procurement system.

4311 This Policy shall be effective on the Effective Date of the College's initial Management Agreement
4312 with the Commonwealth. The implementing policies and procedures adopted by the President to
4313 implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors
4314 affecting procurements at the College, including policies regarding the nature and amounts of
4315 procurements that may be undertaken without the approval of the Board of Visitors, or of the President.

4316 B. Scope and Purpose of College Procurement Policies.

4317 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be
4318 the policy of the College that procurements conducted by the College result in the purchase of high
4319 quality goods and services at reasonable prices, and that the College be free, to the maximum extent
4320 permitted by law and this Policy, from constraining policies that hinder the ability of the College to do
4321 business in a competitive environment. This Policy, together with the Rules Governing Procurement of
4322 Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all
4323 procurements undertaken by the College, regardless of the source of funds.

4324 C. Collaboration, Communication, and Cooperation with the Commonwealth.

4325 The College is committed to developing, maintaining, and sustaining collaboration, communication,
4326 and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly
4327 with the Offices of the Secretaries of Administration and Technology, the Department of General
4328 Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals
4329 common to both the College and the Commonwealth and the mechanisms by which such objectives and
4330 goals may be jointly pursued and achieved are among the desired outcomes of such collaboration,
4331 communication, and cooperation.

4332 D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.

4333 The College is committed to maximizing its internal operational efficiencies, economies of scale
4334 among institutions of higher education, and the leveraged buying power of the Commonwealth as a
4335 whole.

4336 Consistent with this commitment, the College:

4337 i) may purchase from and participate in all statewide contracts for goods and services, including
4338 information technology goods and services, except that the College shall purchase from and participate
4339 in contracts for communications services and telecommunications facilities entered into by the Virginia
4340 Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an exception is
4341 provided in the Appropriation Act or by other law, and provided that orders not placed through
4342 statewide contracts shall be processed directly or by integration or interface through the
4343 Commonwealth's electronic procurement system;

4344 ii) shall use directly or by integration or interface the Commonwealth's electronic procurement
4345 system; and

4346 iii) shall adopt a small, woman-owned, and minority-owned ("SWAM") business program that is
4347 consistent with the Commonwealth's SWAM program.

4348 E. Implementation.

4349 To effect its implementation under the Act, and if the College remains in continued substantial
4350 compliance with the terms and conditions of this Management Agreement with the Commonwealth
4351 pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the College's
4352 procurement of goods, services, insurance, and construction, and the disposition of surplus materials
4353 shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2,
4354 except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information
4355 Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the Information Technology
4356 Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency
4357 requirements regarding disposition of surplus materials and distribution of proceeds from the sale or
4358 recycling of surplus materials in §§ 2.2-1124 and 1125; the requirement to purchase from the
4359 Department for the Blind and Vision Impaired ("VIB") (§ 2.2-1117); and any other state statutes, rules,
4360 regulations or requirements relating to the procurement of goods, services, insurance, and construction,
4361 including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the
4362 duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department
4363 of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review
4364 and the oversight by the Division of Engineering and Buildings of the Virginia Department of General

4365 *Services of contracts for the construction of College capital projects and construction-related*
4366 *professional services (§ 2.2-1132).*

4367 *V. COLLEGE PROCUREMENT POLICIES.*

4368 *A. General Competitive Principles.*

4369 *In connection with College procurements and the processes leading to award of contracts for goods,*
4370 *services, insurance, and construction, the College is committed to:*

4371 *seeking competition to the maximum practical degree, taking into account the size of the anticipated*
4372 *procurement, the term of the resulting contract and the likely extent of competition;*

4373 *conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or*
4374 *the appearance of any impropriety;*

4375 *making procurement rules clear in advance of any competition;*

4376 *providing access to the College 's business to all qualified vendors, firms and contractors, with no*
4377 *potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage*
4378 *in cooperative procurements and to meet special needs of the College;*

4379 *ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular*
4380 *vendor; and*

4381 *providing for the free exchange of information between the College, vendors, firms or contractors*
4382 *concerning the goods or services sought and offered while preserving the confidentiality of proprietary*
4383 *information.*

4384 *B. Access to Records.*

4385 *Procurement records shall be available to citizens or to interested persons, firms or corporations in*
4386 *accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et*
4387 *seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to*
4388 *§ 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia*
4389 *Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.*

4390 *C. Cooperative Procurements and Alliances.*

4391 *In circumstances where the College determines and documents that statewide contracts for goods and*
4392 *services, including information technology and telecommunications goods and services, do not provide*
4393 *goods and services to the College that meet its business goals and objectives, the College is authorized*
4394 *to participate in cooperative procurements with other public or private organizations or entities,*
4395 *including other educational institutions, public-private partnerships, public bodies, charitable*
4396 *organizations, health care provider alliances and purchasing organizations, so long as the resulting*
4397 *contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing*
4398 *Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1*
4399 *and the purposes of this Policy are furthered. In the event the College engages in a cooperative*
4400 *contract with a private organization or public-private partnership and the contract was not competitively*
4401 *procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods,*
4402 *Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by*
4403 *other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the*
4404 *above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's*
4405 *electronic procurement system, including the requirement for payment of applicable fees. By October 1*
4406 *of each year, the President, or his designee, shall make available to the Secretaries of Administration*
4407 *and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts*
4408 *a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

4409 *D. Training; Ethics in Contracting.*

4410 *The President, acting through his designee, shall take all necessary and reasonable steps to assure*
4411 *(i) that all College officials responsible for and engaged in procurements authorized by the Act and this*
4412 *Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public*
4413 *Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter*
4414 *43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any*
4415 *procedures adopted by the President to implement this Policy are responsible for and engaged in such*
4416 *procurements, and (iii) that compliance with the Act and this Policy are achieved.*

4417 *The College shall maintain an ongoing program to provide professional development opportunities to*
4418 *its buying staff and to provide methods training to internal staff who are engaged in placing*
4419 *decentralized small purchase transactions.*

4420 *E. Ethics and College Procurements.*

4421 *In implementing the authority conferred by this Policy, the personnel administering any procurement*
4422 *shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting*
4423 *provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title*
4424 *2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31*
4425 *(§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et*
4426 *seq.) of Chapter 12 of Title 18.2.*

VI. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.

The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the College and the retention of the resulting proceeds by the College.

VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

The President shall adopt one or more comprehensive sets of specific procurement policies and procedures for the College, which, in addition to the Rules, implement applicable provisions of law and this Policy. College procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the College. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate College officials who shall oversee College procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.

Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall become effective on the Effective Date of the College's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the College on behalf of the College for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the College shall not affect existing contracts already in effect.

The Rules and College implementing policies and procedures for all College procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with College procedures specific to the Acquisition of Goods and Services. The Rules and College implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.

VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

A. Protests, Appeals and Debarment.

The Rules and College implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and College implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.

B. Prompt Payment of Contractors and Subcontractors.

The Rules and College implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the College.

C. Types of Procurements.

The Rules and College implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the College. Such policies and procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.

D. Approval and Public Notice of Procurements.

The Rules and College implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.

E. Administration of Contracts.

The Rules and College implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.

F. Non-Discrimination.

The Rules and College implementing policies and procedures shall provide for a non-discriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

ATTACHMENT 1

*Rules Governing Procurement of Goods, Services, Insurance, and Construction
by a Public Institution of Higher Education of the Commonwealth of Virginia*

Governed by Subchapter 3 of the

*Restructured Higher Education Financial and Administrative Operations Act,
Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia*

In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:

§ 1. Purpose. - The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.

§ 2. Scope of Procurement Authority. - Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.

§ 3. Competition is the Priority. - To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

§ 4. Definitions. - As used in these Rules:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award. Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional

4611 services, which includes the following elements:

4612 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications
4613 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided
4614 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite
4615 qualifications of potential contractors. When it is impractical to prepare initially a purchase description
4616 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of
4617 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been
4618 qualified under the criteria set forth in the first solicitation.

4619 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by
4620 publication on the Department of General Services' central electronic procurement website. Public
4621 notice also may be published in a newspaper of general circulation or on other appropriate websites, or
4622 both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations
4623 shall include businesses selected from a list made available by the Department of Minority Business
4624 Enterprise.

4625 3. Public opening and announcement of all bids received.

4626 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include
4627 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria
4628 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose,
4629 which are helpful in determining acceptability.

4630 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of
4631 multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

4632 "Construction" means building, altering, repairing, improving or demolishing any structure, building
4633 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

4634 "Construction management contract" means a contract in which a party is retained by the owner to
4635 coordinate and administer contracts for construction services for the benefit of the owner, and may also
4636 include, if provided in the contract, the furnishing of construction services to the owner.

4637 "Covered Institution" or "Institution" means, on and after the effective date of the initial management
4638 agreement with the Commonwealth of Virginia, a public institution of higher education of the
4639 Commonwealth that has entered into a management agreement with the Commonwealth to be governed
4640 by the provisions of Subchapter 3 of the Restructuring Act.

4641 "Design-build contract" means a contract between the Institution and another party in which the
4642 party contracting with the Institution agrees to both design and build the structure, roadway or other
4643 item specified in the contract.

4644 "Goods" means all material, equipment, supplies, and printing, including information technology and
4645 telecommunications goods such as automated data processing hardware and software.

4646 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of
4647 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or
4648 delivery schedule for the goods, services or construction being procured.

4649 "Multiphase professional services contract" means a contract for the providing of professional
4650 services where the total scope of work of the second or subsequent phase of the contract cannot be
4651 specified without the results of the first or prior phase of the contract.

4652 "Nonprofessional services" means any services not specifically identified as professional services in
4653 the definition of professional services and includes small construction projects valued not over
4654 \$1,000,000; provided that subdivision 3a of the definition of "competitive negotiation" in this section
4655 shall still apply to professional services for such small construction projects.

4656 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who,
4657 at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the
4658 sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured
4659 under the contract, and who at such time is eligible and qualified in all respects to perform that
4660 contract, and who would have been eligible and qualified to submit a bid or proposal had the contract
4661 been procured through competitive sealed bidding or competitive negotiation.

4662 "Professional services" means work performed by an independent contractor within the scope of the
4663 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
4664 dentistry, medicine, optometry, pharmacy or professional engineering.

4665 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
4666 post, commission, committee, institution, board or political subdivision created by law to exercise some
4667 sovereign power or to perform some governmental duty, and empowered by law to undertake the
4668 activities described in these Rules.

4669 "Public contract" means an agreement between the Institution and a nongovernmental source that is
4670 enforceable in a court of law.

4671 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
4672 fully the contract requirements and the moral and business integrity and reliability that will assure good

faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

§ 5. Methods of procurement. -

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.

C. Goods, services, or insurance may be procured by competitive negotiation.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;

3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

4734 *H. The Institution may establish purchase procedures, if adopted in writing, not requiring*
4735 *competitive negotiation for single or term contracts for professional services if the aggregate or the sum*
4736 *of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide*
4737 *for competition wherever practicable.*

4738 *I. Upon a determination made in advance by the Institution and set forth in writing that the*
4739 *purchase of goods, products or commodities from a public auction sale is in the best interests of the*
4740 *public, such items may be purchased at the auction, including online public auctions. The writing shall*
4741 *document the basis for this determination.*

4742 *J. The purchase of goods or nonprofessional services, but not construction or professional services,*
4743 *may be made by reverse auctioning.*

4744 *§ 6. Cooperative procurement. -*

4745 *A. In circumstances where the Institution determines and documents that statewide contracts for*
4746 *goods and services, including information technology and telecommunications goods and services, do*
4747 *not provide goods and services to the Institution that meet its business goals and objectives, the*
4748 *Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement*
4749 *arrangement on behalf of or in conjunction with public bodies, public or private health or educational*
4750 *institutions, other public or private organizations or entities, including public-private partnerships,*
4751 *charitable organizations, health care provider alliances or purchasing organizations or entities, or with*
4752 *public agencies or institutions or group purchasing organizations of the several states, territories of the*
4753 *United States, or the District of Columbia, for the purpose of combining requirements to effect cost*
4754 *savings or reduce administrative expense in any acquisition of goods and services, other than*
4755 *professional services. The Institution may purchase from any authority, department, agency, institution,*
4756 *city, county, town, or other political subdivision of the Commonwealth's contract even if it did not*
4757 *participate in the request for proposal or invitation to bid, if the request for proposal or invitation to*
4758 *bid specified that the procurement was being conducted on behalf of other public bodies. In such*
4759 *instances, deviation from the procurement procedures set forth in these Rules and the administrative*
4760 *policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of*
4761 *the above, use of cooperative contracts shall conform to the business requirements of the*
4762 *Commonwealth's electronic procurement system, including the requirement for payment of applicable*
4763 *fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee*
4764 *that will allow for participation in any such arrangement.*

4765 *B. In circumstances where statewide contracts for goods and services, including information*
4766 *technology and telecommunications goods and services, do not provide goods and services to meet the*
4767 *Institution's business goals and objectives, and as authorized by the United States Congress and*
4768 *consistent with applicable federal regulations, and provided the terms of the contract permit such*
4769 *purchases:*

4770 *1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services*
4771 *Administration contract or a contract awarded by any other agency of the U.S. government; and*

4772 *2. The Institution may purchase telecommunications and information technology goods and*
4773 *nonprofessional services from a U.S. General Services Administration contract or a contract awarded by*
4774 *any other agency of the U.S. government.*

4775 *§ 7. Design-build or construction management contracts authorized. -*

4776 *A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed*
4777 *price design-build basis or construction management basis in accordance with the provisions of this*
4778 *section.*

4779 *B. Procurement of construction by the design-build or construction management method shall be a*
4780 *two-step competitive negotiation process. In the first step, offerors shall be requested to submit their*
4781 *qualifications. Based upon the information submitted and any other relevant information which the*
4782 *Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be*
4783 *selected by the Commonwealth and requested to submit proposals.*

4784 *§ 8. Modification of the contract. -*

4785 *A. A contract awarded by the Institution may include provisions for modification of the contract*
4786 *during performance, but no fixed-price contract may be increased by more than twenty-five percent of*
4787 *the amount of the contract or \$50,000, whichever is greater, without the advance written approval of*
4788 *the Institution's president or his designee. In no event may the amount of any contract, without*
4789 *adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror*
4790 *from the consequences of an error in its bid or offer.*

4791 *B. The Institution may extend the term of an existing contract for services to allow completion of*
4792 *any work undertaken but not completed during the original term of the contract.*

4793 *C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract*
4794 *modifications.*

4795 *§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -*

A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The Institution shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The Institution shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the "performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

§ 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

§ 13. Comments concerning specifications. - The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

4857 § 14. *Prequalification generally; prequalification for construction. -*

4858 A. *Prospective contractors may be prequalified for particular types of supplies, services, insurance or*
4859 *construction, and consideration of bids or proposals limited to prequalified contractors. Any*
4860 *prequalification procedure shall be established in writing and sufficiently in advance of its*
4861 *implementation to allow potential contractors a fair opportunity to complete the process.*

4862 B. *Any prequalification of prospective contractors for construction by the Institution shall be*
4863 *pursuant to a prequalification process for construction projects adopted by the Institution. The process*
4864 *shall be consistent with the provisions of this section.*

4865 *The application form used in such process shall set forth the criteria upon which the qualifications*
4866 *of prospective contractors will be evaluated. The application form shall request of prospective*
4867 *contractors only such information as is appropriate for an objective evaluation of all prospective*
4868 *contractors pursuant to such criteria. The form shall allow the prospective contractor seeking*
4869 *prequalification to request, by checking the appropriate box, that all information voluntarily submitted*
4870 *by the contractor pursuant to this subsection shall be considered a trade secret or proprietary*
4871 *information subject to the provisions of subsection D of § 34 of these Rules.*

4872 *In all instances in which the Institution requires prequalification of potential contractors for*
4873 *construction projects, advance notice shall be given of the deadline for the submission of*
4874 *prequalification applications. The deadline for submission shall be sufficiently in advance of the date*
4875 *set for the submission of bids for such construction so as to allow the procedures set forth in this*
4876 *subsection to be accomplished.*

4877 *At least thirty days prior to the date established for submission of bids or proposals under the*
4878 *procurement of the contract for which the prequalification applies, the Institution shall advise in writing*
4879 *each contractor who submitted an application whether that contractor has been prequalified. In the*
4880 *event that a contractor is denied prequalification, the written notification to the contractor shall state*
4881 *the reasons for the denial of prequalification and the factual basis of such reasons.*

4882 *A decision by the Institution denying prequalification under the provisions of this subsection shall be*
4883 *final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

4884 C. *The Institution may deny prequalification to any contractor only if the Institution finds one of the*
4885 *following:*

4886 1. *The contractor does not have sufficient financial ability to perform the contract that would result*
4887 *from such procurement. If a bond is required to ensure performance of a contract, evidence that the*
4888 *contractor can acquire a surety bond from a corporation included on the United States Treasury list of*
4889 *acceptable surety corporations in the amount and type required by the Institution shall be sufficient to*
4890 *establish the financial ability of the contractor to perform the contract resulting from such procurement;*

4891 2. *The contractor does not have appropriate experience to perform the construction project in*
4892 *question;*

4893 3. *The contractor or any officer, director or owner thereof has had judgments entered against him*
4894 *within the past ten years for the breach of contracts for governmental or nongovernmental construction,*
4895 *including, but not limited to, design-build or construction management;*

4896 4. *The contractor has been in substantial noncompliance with the terms and conditions of prior*
4897 *construction contracts with the Institution without good cause. If the Institution has not contracted with*
4898 *a contractor in any prior construction contracts, the Institution may deny prequalification if the*
4899 *contractor has been in substantial noncompliance with the terms and conditions of comparable*
4900 *construction contracts with another public body without good cause. The Institution may not utilize this*
4901 *provision to deny prequalification unless the facts underlying such substantial noncompliance were*
4902 *documented in writing in the prior construction project file and such information relating thereto given*
4903 *to the contractor at that time, with the opportunity to respond;*

4904 5. *The contractor or any officer, director, owner, project manager, procurement manager or chief*
4905 *financial official thereof has been convicted within the past ten years of a crime related to governmental*
4906 *or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6*
4907 *(§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental*
4908 *Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any*
4909 *substantially similar law of the United States or another state;*

4910 6. *The contractor or any officer, director or owner thereof is currently debarred pursuant to an*
4911 *established debarment procedure from bidding or contracting by any public body, agency of another*
4912 *state or agency of the federal government; and*

4913 7. *The contractor failed to provide to the Institution in a timely manner any information requested*
4914 *by the Institution relevant to subdivisions 1 through 6 of this subsection.*

4915 § 15. *Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid*
4916 *from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest*
4917 *responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to*
4918 *obtain a contract price within available funds. However, the negotiation may be undertaken only under*

conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. Cancellation, rejection of bids; waiver of informalities. -

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.

§ 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.

§ 19. Purchase programs for recycled goods; Institution responsibilities. -

A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.

§ 20. Preference for Virginia products with recycled content and for Virginia firms. -

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

§ 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

§ 22. Preference for recycled paper and paper products used by the Institution. -

A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than ten percent greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

§ 23. Withdrawal of bid due to error. -

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the

4980 preparation of the bid sought to be withdrawn.

4981 One of the following procedures for withdrawal of a bid shall be selected by the Institution and
4982 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to
4983 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall
4984 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or
4985 designated official his original work papers, documents and materials used in the preparation of the bid
4986 within one day after the date fixed for submission of bids. The work papers shall be delivered by the
4987 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either
4988 instance, the work papers, documents and materials may be considered as trade secrets or proprietary
4989 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened
4990 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder
4991 shall have two hours after the opening of bids within which to claim in writing any mistake as defined
4992 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour
4993 period has elapsed. The mistake shall be proved only from the original work papers, documents and
4994 materials delivered as required herein.

4995 B. The Institution may establish procedures for the withdrawal of bids for other than construction
4996 contracts.

4997 C. No bid shall be withdrawn under this section when the result would be the awarding of the
4998 contract on another bid of the same bidder or of another bidder in which the ownership of the
4999 withdrawing bidder is more than five percent.

5000 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed
5001 to be the low bid.

5002 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or
5003 labor to or perform any subcontract or other work agreement for the person or firm to whom the
5004 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
5005 which the withdrawn bid was submitted.

5006 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
5007 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the
5008 bid price, provided such bidder is a responsible and responsive bidder.

5009 § 24. Contract Pricing Arrangements. -

5010 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
5011 basis that is not prohibited by these Rules.

5012 B. Except in case of emergency affecting the public health, safety or welfare, no public contract
5013 shall be awarded on the basis of cost plus a percentage of cost.

5014 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis
5015 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in
5016 whole or part as a percentage of such claims, shall not be prohibited by this section.

5017 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

5018 A. No contractor shall perform any work on a construction project of the Institution unless he (i)
5019 has obtained, and continues to maintain for the duration of the work, workers' compensation coverage
5020 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides
5021 prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

5022 B. The Department of General Services shall provide the form to the Institution. Failure of the
5023 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
5024 of subsection A.

5025 C. No subcontractor shall perform any work on a construction project of the Institution unless he
5026 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
5027 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

5028 § 26. Retainage on construction contracts. -

5029 A. In any contract issued by the Institution for construction that provides for progress payments in
5030 installments based upon an estimated percentage of completion, the contractor shall be paid at least
5031 ninety-five percent of the earned sum when payment is due, with no more than five percent being
5032 retained to ensure faithful performance of the contract. All amounts withheld may be included in the
5033 final payment.

5034 B. Any subcontract for a public project that provides for similar progress payments shall be subject
5035 to the provisions of this section.

5036 § 27. Public construction contract provisions barring damages for unreasonable delays declared
5037 void. -

5038 A. Any provision contained in any public construction contract of the Institution that purports to
5039 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
5040 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
5041 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to

causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.

§ 28. Bid bonds. -

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1,000,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1,000,000.

§ 29. Performance and payment bonds. -

A. Upon the award by the Institution of any (i) public construction contract exceeding \$1,000,000 awarded to any prime contractor or (ii) public construction contract exceeding \$1,000,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1,000,000.

F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

§ 30. Alternative forms of security. -

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

5103 *B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the*
5104 *Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain*
5105 *designated funds in the face amount required for the bid, payment or performance bond. Approval shall*
5106 *be granted only upon a determination that the alternative form of security proffered affords protection*
5107 *to the Institution equivalent to a corporate surety's bond.*

5108 *§ 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or*
5109 *performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for*
5110 *Proposal.*

5111 *§ 32. Action on performance bond. - No action against the surety on a performance bond shall be*
5112 *brought by the Institution unless brought within one year after (i) completion of the contract, including*
5113 *the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty*
5114 *that gave rise to the action.*

5115 *§ 33. Actions on payment bonds; waiver of right to sue. -*

5116 *A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished*
5117 *material in accordance with the contract documents in furtherance of the work provided in any contract*
5118 *for which a payment bond has been given, and who has not been paid in full before the expiration of 90*
5119 *days after the day on which the claimant performed the last of the labor or furnished the last of the*
5120 *materials for which he claims payment, may bring an action on the payment bond to recover any*
5121 *amount due him for the labor or material. The obligee named in the bond need not be named a party*
5122 *to the action.*

5123 *B. Any claimant who has a direct contractual relationship with any subcontractor but who has no*
5124 *contractual relationship, express or implied, with the contractor, may bring an action on the*
5125 *contractor's payment bond only if he has given written notice to the contractor within 180 days from the*
5126 *day on which the claimant performed the last of the labor or furnished the last of the materials for*
5127 *which he claims payment, stating with substantial accuracy the amount claimed and the name of the*
5128 *person for whom the work was performed or to whom the material was furnished. Notice to the*
5129 *contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to*
5130 *such contractor at any place where his office is regularly maintained for the transaction of business.*
5131 *Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not*
5132 *be subject to the time limitations stated in this subsection.*

5133 *C. Any action on a payment bond shall be brought within one year after the day on which the*
5134 *person bringing such action last performed labor or last furnished or supplied materials.*

5135 *D. Any waiver of the right to sue on the payment bond required by this section shall be void unless*
5136 *it is in writing, signed by the person whose right is waived, and executed after such person has*
5137 *performed labor or furnished material in accordance with the contract documents.*

5138 *§ 34. Public inspection of certain records. -*

5139 *A. Except as provided in this section, all proceedings, records, contracts and other public records*
5140 *relating to procurement transactions shall be open to the inspection of any citizen, or any interested*
5141 *person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et*
5142 *seq.).*

5143 *B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution*
5144 *shall not be open to public inspection.*

5145 *C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect*
5146 *bid records within a reasonable time after the opening of all bids but prior to award, except in the*
5147 *event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,*
5148 *bid records shall be open to public inspection only after award of the contract.*

5149 *D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect*
5150 *proposal records within a reasonable time after the evaluation and negotiations of proposals are*
5151 *completed but prior to award, except in the event that the Institution decides not to accept any of the*
5152 *proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection*
5153 *only after award of the contract.*

5154 *E. Any inspection of procurement transaction records under this section shall be subject to*
5155 *reasonable restrictions to ensure the security and integrity of the records.*

5156 *F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in*
5157 *connection with a procurement transaction or prequalification application submitted pursuant to*
5158 *subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et*
5159 *seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to*
5160 *or upon submission of the data or other materials, (ii) identify the data or other materials to be*
5161 *protected, and (iii) state the reasons why protection is necessary.*

5162 *§ 35. Exemption for certain transactions. -*

5163 *A. The provisions of these Rules shall not apply to:*

5164 *1. The selection of services related to the management and investment of the Institution's endowment*

funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.

4. The University of Virginia Medical Center.

5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.

§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.

E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's

charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions. - The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:

1. The purchase of goods or services that are produced or performed by or related to:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;

b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;

c. Private educational institutions; or

d. Other public educational institutions.

2. Speakers and performing artists;

3. Memberships and Association dues;

4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;

5. Group travel in foreign countries;

6. Conference facilities and services;

7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;

8. Royalties; or

9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. - The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

§ 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning:

"Contractor" means the entity that has a direct contract with the Institution.

"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days after receipt of a proper invoice by the Institution or its agent or (b) thirty days after receipt of the goods or services by the Institution..

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

§ 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

§ 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.

§ 42. Prompt payment of bills by the Institution. -

A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.

Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

§ 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall

notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services.

§ 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

§ 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract; or

b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions. -

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

§ 47. Ineligibility. -

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the

5349 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,
5350 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so
5351 requested by the bidder within five business days after receipt of the notice.

5352 Within ten business days after receipt of the notice, the bidder may submit rebuttal information
5353 challenging the evaluation. The Institution shall issue its written determination of disqualification or
5354 ineligibility based on all information in the possession of the Institution, including any rebuttal
5355 information, within five business days of the date the Institution received such rebuttal information.

5356 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to
5357 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the
5358 evaluation reveals that the bidder should be refused permission to participate, or disqualified from
5359 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The
5360 notice shall state the basis for the determination, which shall be final unless the bidder appeals the
5361 decision within ten days after receipt of the notice by invoking administrative procedures meeting the
5362 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided
5363 in § 54.

5364 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in
5365 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be
5366 restoration of eligibility.

5367 § 48. Appeal of denial of withdrawal of bid. -

5368 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final
5369 and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by
5370 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by
5371 instituting legal action as provided in § 54.

5372 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,
5373 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the
5374 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released
5375 only upon a final determination that the bidder was entitled to withdraw the bid.

5376 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an
5377 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the
5378 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation
5379 to Bid, the sole relief shall be withdrawal of the bid.

5380 § 49. Determination of nonresponsibility. -

5381 A. Following public opening and announcement of bids received on an Invitation to Bid, the
5382 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed
5383 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent
5384 low bidder is responsible. If the Institution so determines, then it may proceed with an award in
5385 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution
5386 determines that the apparent low bidder is not responsible, it shall proceed as follows:

5387 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify
5388 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for
5389 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that
5390 relate to the determination, if so requested by the bidder within five business days after receipt of the
5391 notice.

5392 2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information
5393 challenging the evaluation. The Institution shall issue its written determination of responsibility based
5394 on all information in the possession of the Institution, including any rebuttal information, within five
5395 business days of the date the Institution received the rebuttal information. At the same time, the
5396 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

5397 3. Such notice shall state the basis for the determination, which shall be final unless the bidder
5398 appeals the decision within ten days after receipt of the notice by invoking administrative procedures
5399 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action
5400 as provided in § 54.

5401 The provisions of this subsection shall not apply to procurements involving the prequalification of
5402 bidders and the rights of any potential bidders under such prequalification to appeal a decision that
5403 such bidders are not responsible.

5404 B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the
5405 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in
5406 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or
5407 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the
5408 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or
5409 directed award as provided in subsection A of § 54, or both.

5410 If it is determined that the decision of the Institution was not an honest exercise of discretion, but

rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award. -

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution ("ADR") shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest. - An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of

5472 *claims shall not delay payment of amounts agreed due in the final payment.*

5473 *B. The Institution shall include in its contracts a procedure for consideration of contractual claims.*
5474 *Such procedure, which may be contained in the contract or may be specifically incorporated into the*
5475 *contract by reference and made available to the contractor, shall establish a time limit for a final*
5476 *decision in writing by the Institution. If the Institution has established administrative procedures*
5477 *meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or*
5478 *specifically incorporated in the contract by reference and made available to the contractor. The*
5479 *Institution may require the submission of contractual claims pursuant to any contract to Alternative*
5480 *Dispute Resolution ("ADR") as an administrative procedure.*

5481 *C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these*
5482 *Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's*
5483 *decision on the claim, unless the Institution fails to render such decision within the time specified in the*
5484 *contract.*

5485 *D. The decision of the Institution shall be final and conclusive unless the contractor appeals within*
5486 *six months of the date of the final decision on the claim by the Institution by invoking administrative*
5487 *procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting*
5488 *legal action as provided in § 54.*

5489 *§ 54. Legal actions. -*

5490 *A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from*
5491 *participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder*
5492 *or offeror for a particular contract, may bring an action in the appropriate circuit court challenging*
5493 *that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an*
5494 *honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the*
5495 *Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation*
5496 *to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of*
5497 *prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder,*
5498 *having been previously determined by the Institution to be not responsible in accordance with § 4, is*
5499 *found by the court to be a responsible bidder, the court may direct the Institution to award the contract*
5500 *to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

5501 *B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the*
5502 *appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes*
5503 *that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary*
5504 *or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,*
5505 *or the terms or conditions of the Invitation to Bid.*

5506 *C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a*
5507 *sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award*
5508 *or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit*
5509 *court challenging a proposed award or the award of a contract, which shall be reversed only if the*
5510 *petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,*
5511 *but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable*
5512 *state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

5513 *D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting*
5514 *of reasonable security to protect the Institution.*

5515 *E. A contractor may bring an action involving a contract dispute with the Institution in the*
5516 *appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be*
5517 *named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of*
5518 *Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of*
5519 *Accounts.*

5520 *F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards*
5521 *of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or*
5522 *contractor, the procedures shall be exhausted prior to instituting legal action concerning the same*
5523 *procurement transaction unless the Institution agrees otherwise.*

5524 *G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a*
5525 *contractor.*

5526 *§ 55. Administrative appeals procedure. -*

5527 *A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to*
5528 *award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from*
5529 *disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes*
5530 *arising during the performance of a contract, or (v) any of these. Such administrative procedure may*
5531 *include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a*
5532 *disinterested person or panel, the opportunity to present pertinent information and the issuance of a*
5533 *written decision containing findings of fact. The disinterested person or panel shall not be an employee*

of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution ("ADR") procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

§ 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting. - The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

EXHIBIT K

MANAGEMENT AGREEMENT

BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

AND

THE VIRGINIA INSTITUTE OF MARINE SCIENCE

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT
OF 2005

POLICY GOVERNING

HUMAN RESOURCES FOR

PARTICIPATING COVERED EMPLOYEES

AND OTHER COLLEGE EMPLOYEES

THE RECTOR AND VISITORS OF

THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

POLICY GOVERNING HUMAN RESOURCES FOR

PARTICIPATING COVERED EMPLOYEES

AND OTHER COLLEGE EMPLOYEES

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the College of William & Mary in Virginia shall have responsibility and accountability for human resources management for all College employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § 23-38.114 of the Act "are state employees of" the College. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or College-sponsored benefit plans as described by the Management Agreement.

The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by

5595 *the College for its employees.*

5596 *This Policy is intended to cover the authority that may be granted to the College pursuant to*
5597 *Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the*
5598 *Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act*
5599 *and the College's Enabling Legislation, are not affected by this Policy.*

5600 **II. DEFINITIONS.**

5601 *As used in this policy, the following terms shall have the following meanings, unless the context*
5602 *requires otherwise:*

5603 *"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*
5604 *Chapter 4.10 of Title 23 of the Code of Virginia.*

5605 *"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William &*
5606 *Mary and the Virginia Institute of Marine Science.*

5607 *"Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29*
5608 *(§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by*
5609 *the Virginia Department of Human Resource Management and who are not Participating Covered*
5610 *Employees.*

5611 *"College" means the College of William and Mary in Virginia, formerly known as agency 204 and*
5612 *the Virginia Institute of Marine Science, formerly known as agency 268.*

5613 *"College employee" means a Covered Employee.*

5614 *"College Human Resources System" means the human resources system for College employees as*
5615 *provided for herein.*

5616 *"Covered Employee" means any person who is employed by the College on either a salaried or*
5617 *non-salaried (wage) basis.*

5618 *"Covered Institution" means, on and after the Effective Date of its initial Management Agreement*
5619 *with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that*
5620 *has entered into a Management Agreement with the Commonwealth to be governed by the provisions of*
5621 *Subchapter 3 of the Act.*

5622 *"Employee" means Covered Employee unless the context clearly indicates otherwise.*

5623 *"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of*
5624 *Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and*
5625 *missions of the College.*

5626 *"Effective Date" means the effective date of the initial Management Agreement between the College*
5627 *and the Commonwealth.*

5628 *"Governing Law" means the Act and the College's Enabling Legislation.*

5629 *"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act*
5630 *between the College and the Commonwealth.*

5631 *"Participating Covered Employee" means (i) all salaried nonfaculty College employees who were*
5632 *employed as of the day prior to the Effective Date of the College's initial Management Agreement with*
5633 *the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be governed*
5634 *by such human resources program or programs, plans, policies, and procedures established by the*
5635 *College, (ii) all salaried nonfaculty College employees who are employed by the College on or after the*
5636 *Effective Date of the initial Management Agreement between the College and the Commonwealth, (iii)*
5637 *all non-salaried nonfaculty College employees without regard to when they were hired, (iv) all faculty*
5638 *College employees without regard to when they were hired.*

5639 *"Systems" means collectively the College Human Resources System that is in effect from time to time.*

5640 **III. SCOPE AND PURPOSE OF COLLEGE HUMAN RESOURCES POLICIES.**

5641 *The College has had human resources system autonomy through decentralization for its employees*
5642 *for some time. For example, general faculty at the College are expressly exempt from the Virginia*
5643 *Personnel Act. The College has had decentralization in most human resources functions and activities*
5644 *since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the*
5645 *administration of hiring, classification, and promotion practices.*

5646 *The Act extends and reinforces the human resources autonomy previously granted to the College.*
5647 *This Policy therefore is adopted by the Board of Visitors to enable the College to develop, adopt, and*
5648 *have in place by or after the Effective Date of its initial Management Agreement with the*
5649 *Commonwealth, a human resources system or systems for all College employees. On that Effective*
5650 *Date, and until changed by the College or unless otherwise specified in this Policy, the systems for*
5651 *College employees shall be the same systems applicable to those employees in effect immediately prior*
5652 *to that Effective Date.*

5653 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

5654 *The Board of Visitors of the College shall at all times be fully and ultimately accountable for the*
5655 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*
5656 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*

to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.

V. COLLEGE OF WILLIAM & MARY HUMAN RESOURCES SYSTEMS.

A. Adoption and Implementation of College Human Resources Systems.

The President is hereby authorized to adopt and implement human resources systems for employees of the College that are consistent with the Governing Law, other applicable provisions of law, these College human resources policies for College employees, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for College personnel, unless College employees are exempted from those other human resources policies by law or policy. The College Human Resources Systems shall include a delegation of personnel authority to appropriate College officials responsible for overseeing and implementing the College Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.

The College commits to regularly engage employees in appropriate discussions and to receive employee input as the new College Human Resources Systems are developed. The College will regularly communicate the details of new proposals to all employees who are eligible to participate in the College Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.

Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and until amended as described below, the College's human resources systems shall consist of the following:

1. the current "College of William and Mary Faculty Handbook," as it is posted on the Provost's website, <http://www.wm.edu/provost/index.php>, and periodically amended; and

2. the current human resources system for Classified Employees in the College as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>; and

3. the human resources system for Participating Covered Employees, which shall include non-salaried (wage) employees, as posted on the College Human Resources web site, <http://www.wm.edu/hr.html> and periodically amended.

All the systems describe above, except the system described in paragraph 3, may be amended by the President, consistent with these human resources policies. The system described in paragraph 3 may be amended only by the State.

B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.

The President, or designee, shall take all necessary and reasonable steps to assure (i) that the College officials who develop, implement and administer the College Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these College human resources policies, and other applicable Board of Visitors' human resources policies affecting College employees, and (ii) that compliance with such laws and human resources policies is achieved.

VI. HUMAN RESOURCES POLICIES.

The College Human Resources Systems adopted by the College pursuant to Governing Law and this Policy, as set forth in Section V above, shall embody the following human resources policies and principles:

A. Election by College Salaried Nonfaculty Employees.

Upon the adoption by the College of a College Human Resources System, each salaried nonfaculty College employee who was in the employment of the College, as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth shall be permitted to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia and administered by the Department of Human Resource Management, or (ii) the College Human Resources System, as appropriate. A salaried nonfaculty College employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty College employee who elects to participate in and be governed by the College Human Resources System, by that election, shall be deemed to have elected to be eligible to participate in and to be governed by the College human resources program, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the College as part

5718 of that College Human Resources System.

5719 The College shall provide each of its salaried nonfaculty College employees who was in the
5720 employment of the College as of the day prior to the Effective Date of the College's initial Management
5721 Agreement with the Commonwealth at least 90 days after the date on which the College Human
5722 Resources System becomes effective for that College employee's classification of employees to make the
5723 election required by the prior paragraph. If such a salaried nonfaculty College employee does not make
5724 an election by the end of that specified election period, that College employee shall be deemed not to
5725 have elected to participate in the College Human Resources System. If such a salaried nonfaculty
5726 College employee elects to participate in the College Human Resources System, that election shall be
5727 irrevocable. At least every two years, the College shall offer to salaried nonfaculty College employees
5728 who have elected to continue to participate in the state human resources program set forth in Chapters
5729 28 (§ 22.-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 an opportunity to elect to participate in
5730 the College Human Resources System, provided that, each time prior to offering such opportunity to
5731 such salaried nonfaculty College employees, and at least once every two years after the effective date of
5732 the College Human Resources System, the College shall make available to each of its salaried
5733 nonfaculty College employees a comparison of its human resources program for that classification of
5734 salaried nonfaculty College employee with the State human resources program for comparable State
5735 employees, including but not limited to a comparability assessment of compensation and benefits. A copy
5736 of the human resources program comparison shall be provided to the Department of Human Resource
5737 Management.

5738 B. Classification and Compensation.

5739 General. The Systems shall include classification and compensation plans that are fair and
5740 reasonable, and are based on the availability of College financial resources. The plans adopted by the
5741 College Participating Covered Employees shall be independent of, and need not be based on, the
5742 classification and compensation plans of the Commonwealth, do not require the approval of any State
5743 agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth
5744 in paragraph 3 below. The College shall provide information on its classification and compensation
5745 plans to all College employees. The plans applicable to Participating Covered Employees may or may
5746 not include changes in classification or compensation announced by the Commonwealth depending on
5747 such factors as the availability of necessary financial resources to fund any such changes, and subject
5748 to the review and approval by the Board of Visitors of any major changes in the College's compensation
5749 plans.

5750 Classification Plan. The Systems shall include one or more classification plans for College
5751 employees that classify positions according to job responsibilities and qualifications. On the Effective
5752 Date of the College's initial Management Agreement with the Commonwealth, and until changed by the
5753 College, the classification plans shall be the same plans that are in effect for each group of employees
5754 immediately prior to that Effective Date.

5755 Compensation Plan. The Systems shall include one or more compensation plans for each College
5756 employee classification or group. On the Effective Date of the College's initial Management Agreement
5757 with the Commonwealth, and until changed by the Department of Human Resource Management, the
5758 compensation plan for Classified Employees in the College shall be the compensation plan in effect
5759 immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan.
5760 On that Effective Date, and until changed by the College, the compensation plan or plans for all
5761 Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to
5762 that Effective Date. The College may adopt one or more compensation plans for Participating Covered
5763 Employees that are non-graded plan(s) based on internal and external market data and other relevant
5764 factors to be determined annually. Any major change in compensation plans for Participating Covered
5765 Employees shall be reviewed and approved by the Board of Visitors before that change becomes
5766 effective. Any change recommended in the compensation plans may take into account the prevailing
5767 rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the
5768 competency and skills of the individual employee, internal equity, and the availability of necessary
5769 financial resources to fund the proposed change. The compensation payable to College employees shall
5770 be authorized and approved only by designated College officers delegated such authority by the College,
5771 and shall be consistent with the approved compensation plan for the relevant position or classification.
5772 Further approval by any other State Agency, governmental body or officer is not required for setting,
5773 adjusting or approving the compensation payable to individual Participating Covered Employees.

5774 Wages. The Systems shall include policies and procedures for the authorization, computation and
5775 payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and
5776 call back, and for the payment of hourly employees.

5777 Payment of Compensation. The Systems shall include policies and procedures for paying
5778 compensation to employees, including the establishment of one or more payday schedules.

5779 Work Schedule and Workweek. The Systems shall include policies and procedures for the

establishment of, and modifications to, work schedules and workweeks for all College employees, including alternative work schedules and sites, and telecommuting policies and procedures.

Other Classification and Compensation Policies and Procedures. The Systems may include any other reasonable classification and compensation policies and procedures the President deems appropriate.

C. Benefits.

The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in §23-38.119.B and C of the Act, the College may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by §23-38.119B and D of the Act or any other provision of law.

Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible College employees.

The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the College to Classified Employees and Participating Covered Employees shall be the benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative College group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of §23-38.119 of the Act, they may be provided by the appropriate State programs, but no contributions to the state programs by the College shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in College employee benefit plans, other than Classified Employee benefit plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for College employees other than Classified Employees.

Insurance and all proceeds therefrom provided pursuant to §23-38.119 of the Act shall be exempt from legal process and may be subject to voluntary assignment as provided in subsection A of §23-38.119.

D. Employee Relations.

General. The Systems shall contain provisions that protect the rights and privileges of College employees consistent with sound management principles and fair employment practice law.

Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.

Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.

Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing College employees, including but not limited to those who have performed particularly meritorious service for the College, have been employed by the College for specified periods of time, or have retired from the College after lengthy service.

Counseling Services. The Systems shall provide counseling services through the State's Employee Assistance Program or a College Employee Assistance Program to any eligible College employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.

Unemployment Compensation. The Systems shall ensure that College employees receive the full unemployment compensation benefits to which they are legally entitled, and that the College's liability is limited to legitimate claims for such benefits.

5841 *Workers' Compensation. The Systems shall ensure that College employees have workers'*
5842 *compensation benefits to which they are legally entitled pursuant to the State Employees Workers'*
5843 *Compensation Program administered by the Department of Human Resource Management.*

5844 *8. Performance Planning and Evaluation. The Systems shall include one or more performance*
5845 *planning and evaluation processes for College employees that (i) establish and communicate the*
5846 *College's performance expectations, (ii) help develop productive working relationships, (iii) allow*
5847 *employees to present their views concerning their performance, (iv) identify areas for training or*
5848 *professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify*
5849 *how superlative or inadequate performance shall be addressed, and (vii) ensure that all College*
5850 *employees are provided relevant information on the evaluation process. The Systems may include*
5851 *separate performance and evaluation processes for reasonably distinguishable groups of College*
5852 *employees. On the Effective Date of the College's initial Management Agreement with the*
5853 *Commonwealth, the existing merit-based performance management system for faculty shall continue,*
5854 *until amended by the College. On or after that Effective Date, College nonfaculty salaried Participating*
5855 *Covered Employees may be subject to a variable merit-based performance management system.*

5856 *9. Standards of Conduct and Performance. In order to protect the well-being and rights of all*
5857 *employees and to ensure safe, efficient College operations and compliance with the law, the Systems*
5858 *shall establish rules of personal conduct and standards of acceptable work performance for College*
5859 *salaried nonfaculty employees and policies for corrective discipline. In general, the policies for*
5860 *corrective discipline shall serve to (i) establish a uniform and objective process for correcting or*
5861 *disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more*
5862 *serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action*
5863 *to employee conduct occurring only when employees are at work or are otherwise representing the*
5864 *College in an official or work-related capacity, unless otherwise specifically provided by the policies of*
5865 *the Systems or other applicable law. The Systems may provide for a probationary period for new and*
5866 *re-employed College salaried nonfaculty employees, during which period the policies for corrective*
5867 *discipline shall not be applicable and the employee may not use the grievance procedure set forth in the*
5868 *next paragraph. The Systems may include separate rules of personal conduct and standards of*
5869 *acceptable work performance and policies for corrective discipline for reasonably distinguishable groups*
5870 *of College employees.*

5871 *10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to*
5872 *resolve employment-related problems and complaints informally, and shall be permitted to discuss their*
5873 *concerns freely and without fear of retaliation with immediate supervisors and management. In the*
5874 *event that such problems cannot be resolved informally, all salaried nonfaculty College employees,*
5875 *regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in*
5876 *§ 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of*
5877 *the Code of Virginia, to the extent it was applicable to their classification of employees prior to the*
5878 *Effective Date of the College's initial Management Agreement with the Commonwealth. On that*
5879 *Effective Date, and until changed by the College, the faculty grievance procedures in effect immediately*
5880 *prior to the Effective Date shall continue.*

5881 *11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the*
5882 *Classified Employee may file a complaint with the Department of Human Resource Management Office*
5883 *of Equal Employment Services. All Covered Employees and applicants for employment after the*
5884 *Effective Date of the College's initial Management Agreement with the Commonwealth shall file a*
5885 *complaint with the appropriate College office or with the appropriate federal agencies.*

5886 *12. Layoff Policy. The Systems shall include one or more layoff policies for salaried College*
5887 *employees who lose their jobs for reasons other than their job performance or conduct, such as a*
5888 *reduction in force or reorganization at the College. These College layoff policies shall govern such*
5889 *issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)*
5890 *notice to employees affected by a layoff, (iv) placement options within the College or its respective major*
5891 *divisions and within other parts of the College, (v) the preferential employment rights, if any, of various*
5892 *College employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling*
5893 *employees. In accordance with the terms of the Act, College employees who: (i) were employed prior to*
5894 *the Effective Date of the College's initial Management Agreement with the Commonwealth, (ii) would*
5895 *otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by*
5896 *the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in*
5897 *force shall have the same preferential hiring rights with State agencies and other executive branch*
5898 *institutions as Classified Employees have under § 2.2-3201 of the Code of Virginia. Conversely, the*
5899 *College shall recognize the hiring preference conferred by § 2.2-3201 on State employees who were*
5900 *hired by a State agency or executive branch institution before the Effective Date of the College's initial*
5901 *Management Agreement with the Commonwealth and who were separated after that date by that State*
5902 *agency or executive branch institution because of a reduction in workforce. If the College has adopted*

a classification system pursuant to § 23-38.116 of the Act that differs from the classification system administered by the Department of Human Resource Management, the College shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The College may include separate policies for reasonably distinguishable groups of College employees. On or after the Effective Date of the College's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the College under the provisions of the State Layoff Policy shall be Participating Covered Employees.

13. *Severance Benefits.* In accordance with the terms of the Act, the College shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the College's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of Virginia. The College and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee's becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies would apply.

14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i) establish and maintain a work environment at the College that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the College of William & Mary Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide College employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the College is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the College's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to College employees of the scope and content of the College alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for College positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License.

15. *Background Checks.* The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/ professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the College, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.

16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other reasonable employee relations policies or procedures that the President deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed College employees, an employee suggestion program, the responsibility of College employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the College.

E. Leave and Release Time.

The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the College shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the College may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.

F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.

1. *Equal Employment Opportunity and Nondiscrimination.* The Systems shall contain policies and

5964 procedures to ensure that all aspects of human resources management, including the employment of
5965 College employees, meet all requirements of federal and state law, and of the relevant policies of the
5966 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

5967 *Employment.* The Systems shall include policies and procedures for the recruitment, selection and
5968 hiring of College employees that are based on merit and fitness, including where appropriate a
5969 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference
5970 checks and conviction record checks. On and after the Effective Date of its initial Management
5971 Agreement with the Commonwealth, the College shall post all salaried nonfaculty position vacancies
5972 through the College's job posting system, the Commonwealth's job posting system, and other external
5973 media as appropriate. The Systems shall establish designated veterans' re-employment rights in
5974 accordance with applicable law.

5975 *In order to encourage employees to attain the highest level positions for which they are qualified,*
5976 *and to compensate employees for accepting positions of increased value and responsibility, the Systems*
5977 *shall include policies and procedures governing the promotion of employees, including the effect of*
5978 *promotion on an employee's compensation.*

5979 *On or after the Effective Date of the College's initial Management Agreement with the*
5980 *Commonwealth, all employees hired from other state agencies shall be Participating Covered*
5981 *Employees. College Classified Employees who change jobs within the College through a competitive*
5982 *employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified*
5983 *Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a*
5984 *Participating Covered Employee, that decision shall be irrevocable.*

5985 *Notice of Separation.* The Systems shall include policies and procedures requiring reasonable notice,
5986 where appropriate, of a decision either by the employee or by the College to separate the employee
5987 from the College in accordance with policies governing performance, conduct, or layoff.

5988 *G. Information Systems.*

5989 *The College shall provide an electronic file transfer of information on all salaried College employees*
5990 *and shall continue to provide the Employee Position Reports to meet the human resources reporting*
5991 *requirements specified by law or by request of the Governor or the General Assembly, unless the*
5992 *College is specifically exempted from those requirements. The College shall conduct assessments to*
5993 *demonstrate its accountability for human resources practices that comply with laws and regulations.*
5994 *The Department of Human Resource Management and the College have entered into a Memorandum of*
5995 *Understanding, attached hereto as Attachment 2, which may be amended from time to time by*
5996 *agreement of the parties, regarding the specific data and reporting requirements. The College shall be*
5997 *accountable for ensuring the timeliness and integrity of the data transmitted to the Department of*
5998 *Human Resources Management.*

5999 **VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND**
6000 **OTHER BOARD OF VISITORS' POLICIES AFFECTING COLLEGE PERSONNEL.**

6001 *On and after the Effective Date of its initial Management Agreement with the Commonwealth,*
6002 *College employees shall be subject to the terms and conditions of the Act and the Management*
6003 *Agreement between the Commonwealth and the College. Classified Employees shall continue to be*
6004 *subject to the human resources policies and exceptions to those policies adopted or approved by the*
6005 *Department of Human Resource Management.*

6006 *In addition, all College employees also shall remain subject to any other human resources policies*
6007 *adopted by the Board of Visitors applicable to College personnel unless College employees or a subset*
6008 *thereof are specifically exempted from those other human resources policies either by those other*
6009 *policies or by this Policy.*

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ATTACHMENT 2

Memorandum of Understanding

*Between the The College of William and Mary and the
Department of Human Resources Management Regarding
The Reporting of Human Resources Management Data*

6017 *This Memorandum of Understanding, which may be amended from time to time by the agreement of*
6018 *all parties, is an attachment to the Policy Governing Human Resources for Participating Covered*
6019 *Employees and Other College Employees pursuant to the Restructured Higher Education Financial and*
6020 *Administrative Operations Act of 2005, and is hereby entered into between the College of William and*
6021 *Mary and the Department of Human Resource Management (DHRM).*

6022 *I. This document outlines the provisions for information management pertaining to human resources*
6023 *data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting*
6024 *requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so*
6025 *through efficient and cost-effective methods.*

1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.

a. The College will provide a flat file of designated personnel data. For "Classified Employees", the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees", the data provided will include the University's data values for the designated fields. The College will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

b. The College will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees", such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the College's compliance with relevant federal and state employment laws and regulations.

3. The College may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self service).

4. Other reports to be provided by the College include the following:

a. Monthly Employment Position Report

b. Annual report on salaried, wage, and contract employees

The undersigned hereby agree to the provisions contained in the MOU.

APPROVALS:

The College of William and Mary:

By:Date.....

Vice President for Administration

Department of Human Resources Management:

By:Date.....

Director, Department of Human Resources Management

EXHIBIT L

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COLLEGE OF WILLIAM AND MARY PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

THE RECTOR AND BOARD OF VISITORS OF THE COLLEGE OF WILLIAM AND MARY POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the College of William and Mary's financial operations and management.

This Policy is intended to cover the authority that may be granted to the College pursuant to

6087 Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the
6088 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
6089 and the College's Enabling Legislation, are not affected by this Policy.

6090 II. DEFINITIONS.

6091 As used in this policy, the following terms shall have the following meanings, unless the context
6092 requires otherwise:

6093 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
6094 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

6095 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William
6096 and Mary and the Virginia Institute of Marine Science.

6097 "College" means the College of William and Mary (state agency 204) and the Virginia Institute of
6098 Marine Science (state agency 268).

6099 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
6100 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
6101 entered into a Management Agreement with the Commonwealth to be governed by the provisions of
6102 Subchapter 3 of the Act.

6103 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of
6104 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
6105 missions of the College.

6106 "Effective Date" means the effective date of the initial Management Agreement between the College
6107 and the Commonwealth.

6108 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
6109 between the College and the Commonwealth of Virginia.

6110 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
6111 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
6112 general government funds, as defined in the December 20, 2004 Report to the Governor and General
6113 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

6114 III. SCOPE OF POLICY.

6115 This Policy applies to the College's responsibility for management, investment and stewardship of all
6116 its financial resources, including but not limited to, general, non-general and private funds. This
6117 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
6118 and internal controls adequate to protect and account for the College's financial resources.

6119 The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it is
6120 implemented by the College on behalf of the Institute, but the Institute shall not receive any additional
6121 independent financial operations and management authority as a result of this Management Agreement
6122 beyond the independent financial operations and management authority that it had prior to the Effective
6123 Date of the College's initial Management Agreement with the Commonwealth or that it may be granted
6124 by law in the future.

6125 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

6126 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
6127 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
6128 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
6129 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
6130 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
6131 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
6132 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
6133 and procedures.

6134 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

6135 The President, or designee, shall continue to be authorized by the Board to maintain existing and
6136 implement new policies governing the management of College financial resources. These policies shall
6137 continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency
6138 with the current accounting principles employed by the Commonwealth, including the use of fund
6139 accounting principles, with regard to the establishment of the underlying accounting records of the
6140 College and the allocation and utilization of resources within the accounting system, including the
6141 relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with
6142 regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide
6143 adequate risk management and internal controls to protect and safeguard all financial resources,
6144 including moneys transferred to the College pursuant to a general fund appropriation, and ensure
6145 compliance with the requirements of the Appropriation Act.

6146 The financial management system shall continue to include a financial reporting system to satisfy
6147 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,
6148 as specified in the related State Comptroller's Directives, and the College's separately audited financial

statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the College, the accounting and bookkeeping system of the College shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.

In addition, the financial management system shall continue to provide financial reporting for the President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the College. Upon the Effective Date of the initial Management Agreement between the College and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the College shall not be required to record its financial transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing with CARS, or be a part of any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The College's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

VI. FINANCIAL MANAGEMENT POLICIES.

The President, or designee, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all College financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the College, but rather will focus on the internal operations of the College's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the College's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure College financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of College programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the College.

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the College shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the College shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia ("SCHEV") annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Education and General Revenues deposited into the State Treasury by the public institution of higher education.

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the College is authorized to hold and invest tuition, Educational and General ("E&G") fees, research and sponsored program funds, auxiliary

6210 *enterprise funds, and all other non-general fund revenues subject to the following requirements:*

6211 *i) The College shall deposit such funds in the State Treasury pursuant to the State process in place*
6212 *at the time of such deposit;*

6213 *ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section*
6214 *IX below;*

6215 *iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold*
6216 *in escrow all interest earned on the College's tuition and fees and other non-general fund Educational*
6217 *and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia*
6218 *certification that the College has met such institutional performance benchmarks and the conditions*
6219 *prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a*
6220 *non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year,*
6221 *equivalent to the amount deposited in the escrow account as the financial incentive provided in*
6222 *subdivision 1 of § 2.2-5005, after which time the College may expend the funds for purposes related to*
6223 *its mission. If public institutions of higher education of the Commonwealth are permitted, or the College*
6224 *in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the*
6225 *Commonwealth would have earned on sponsored programs and research funds, then this paragraph*
6226 *shall not apply to such interest on such funds, and such interest shall not be held in escrow.*

6227 *iv) If in any given year the College does not receive the certification from the State Council of*
6228 *Higher Education for Virginia that it has met for that year the institutional benchmarks called for by*
6229 *subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall*
6230 *transfer to the general fund the balance in the escrow account as of June 30 of that year.*

6231 *v) Beginning on the effective date of its initial Management Agreement with the College until the*
6232 *beginning of the first fiscal year following the fiscal year for which it has received the required*
6233 *certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds*
6234 *with the State Treasurer by the same process that it would have been required to use if it had not*
6235 *entered into a Management Agreement with the Commonwealth.*

6236 *vi) On the first business day of the first fiscal year following the fiscal year for which it has*
6237 *received the required certification from SCHEV, the College may draw down all cash balances held by*
6238 *the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored*
6239 *programs, auxiliary enterprises, and all other non-general fund revenues.*

6240 *vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay*
6241 *these funds to the College as specified in Section IX below.*

6242 *The College also shall have sum sufficient appropriation authority for all non-general funds as*
6243 *approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations*
6244 *process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general*
6245 *fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of*
6246 *the two years in the next biennium by November 1 of each odd numbered year and the estimate to be*
6247 *included in the Budget Bill for the first and second year of the then-current biennium by November 1 of*
6248 *each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to*
6249 *the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

6250 *The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other*
6251 *charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income*
6252 *undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the*
6253 *intent of the Commonwealth and the College that the College shall be exempt from the revenue*
6254 *restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,*
6255 *unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the*
6256 *College that the College shall be entitled to retain non-general fund savings generated from changes in*
6257 *Commonwealth rates and charges, including but not limited to health, life, and disability insurance*
6258 *rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting*
6259 *such savings back to the Commonwealth. This financial resource policy assists the College by providing*
6260 *the framework for retaining and managing non-general funds, for the receipt of general funds, and for*
6261 *the use and stewardship of all these funds.*

6262 *The President, or designee, shall continue to provide oversight of the College's cash management*
6263 *system which is the framework for the retention of non-general funds. The Internal Audit Department of*
6264 *the College shall periodically audit the College's cash management system in accordance with*
6265 *appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors.*
6266 *Additional oversight shall continue to be provided through the annual audit and assessment of internal*
6267 *controls performed by the Auditor of Public Accounts.*

6268 *For the receipt of general and non-general funds, the College shall conform to the Security for*
6269 *Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently*
6270 *exists and from time to time may be amended.*

6271 **VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.**

The President, or designee, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of College financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia such that the College shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

These shall include, but not be limited to, establishing the criteria for granting credit to College customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all College accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the College shall continue to utilize the Commonwealth's Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.

IX. DISBURSEMENT MANAGEMENT.

The President, or designee, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of College financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the College's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's mission, including travel-related disbursements. Further, the College's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the College no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the College shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to the Commonwealth's Debt Set Off Collection Programs.

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the College may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the College for disbursement as provided in the then-current rules of the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in accordance with the following schedule:

i) the College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50 percent of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;

ii) the College may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and

iii) the College anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the College projects a cost deficit in activities supported by general fund appropriations, the College may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

These disbursement policies shall authorize the President, or designee, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the College shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The College shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

The College's disbursement policies shall be guided by the principles of the Commonwealth's policies

6333 as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date
6334 of its initial Management Agreement with the Commonwealth, the College shall continue to follow the
6335 Commonwealth's disbursement policies until such time as specific alternative policies can be developed,
6336 approved and implemented. Such alternate policies shall be submitted to the State Comptroller for
6337 review and comment prior to their implementation by the College.

6338 **X. DEBT MANAGEMENT.**

6339 The President, or designee, shall continue to be authorized to create and implement any and all debt
6340 management policies as part of a system for the management of College financial resources.

6341 Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or
6342 other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board,
6343 and that are consistent with debt capacity and management policies and guidelines established by its
6344 Board of Visitors, without obtaining the consent of any legislative body, elected official, commission,
6345 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any
6346 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided
6347 that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this
6348 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised
6349 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and
6350 comment prior to its adoption by the College.

6351 The College recognizes that there are numerous types of financing structures and funding sources
6352 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by
6353 the President, or designee, within the context of the overall portfolio to ensure that any financial
6354 product or structure is consistent with the College's objectives. Regardless of the financing structure(s)
6355 utilized, the President, or designee, shall obtain sufficient documentation to gain a full understanding of
6356 the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the
6357 impact on College creditworthiness and debt capacity. All such debt or financial products issued
6358 pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of
6359 the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

6360 The College will establish guidelines relating to the total permissible amount of outstanding debt by
6361 monitoring College-wide ratios that measure debt compared to College balance-sheet resources and
6362 annual debt service burden. These measures will be monitored and reviewed regularly in light of the
6363 College's current strategic initiatives and expected debt requirements. The Board of Visitors shall
6364 periodically review and approve the College's debt capacity and debt management guidelines. Any
6365 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior
6366 to their adoption by the College.

6367 **XI. INVESTMENT POLICY.**

6368 It is the policy of the College to invest its operating and reserve funds solely in the interest of the
6369 College and in a manner that will provide the highest investment return with the maximum security
6370 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
6371 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence
6372 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity
6373 and familiar with such matters would use in the conduct of an enterprise of a like character and with
6374 like aims.

6375 Endowment investments shall be invested and managed in accordance with the Uniform Management
6376 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

6377 The Board of Visitors shall periodically review and approve the investment guidelines governing the
6378 College's operating and reserve funds.

6379 **XII. INSURANCE AND RISK MANAGEMENT.**

6380 By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any
6381 intent during the next biennium to withdraw from any insurance or risk management program made
6382 available to the College through the Commonwealth's Division of Risk Management and in which the
6383 College is then participating, to enable the Commonwealth to complete an adverse selection analysis of
6384 any such decision and to determine the additional costs to the Commonwealth that would result from
6385 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College
6386 proceeds to withdraw from the insurance or risk management program, the College shall reimburse the
6387 Commonwealth for all such additional costs attributable to such withdrawal, as determined by the
6388 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and
6389 the Commonwealth.

6390
6391 **3. That the following Chapter 3 shall hereafter be known as the "2006 Management Agreement**
6392 **Between the Commonwealth of Virginia and The University of Virginia":**

6393 **CHAPTER 3.**

6394

MANAGEMENT AGREEMENT
BY AND BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the "Commonwealth") and the Rector and Visitors of the University of Virginia (hereafter, "the University") provides as follows:

RECITALS

WHEREAS the University has satisfied the conditions precedent set forth in subsections A and B of § 23-38.97 of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ 23-38.91 et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia ("Subchapter 3" and the "Act," respectively), as evidenced by:

1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the University held on June 10, 2005, and the accompanying certification of the Secretary of the Board, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subsection A 1 of § 23-38.97 of the Act;

2. Written Application to the Governor. The University has submitted to the Governor a written Application, dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the University is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the University has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and

3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act, the Governor has found that the University has fulfilled the requirements of subsection A 2 of § 23-38.97, and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the University; and

WHEREAS, the University is therefore authorized to enter into this Management Agreement as provided in subsection D of § 23-38.88 and Subchapter 3 of the Act.

AGREEMENT

NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the University do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as State Agency 207.

"Act" means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement."

"Board of Visitors" means the Rector and Board of Visitors of the University of Virginia.

"College" means that part of the University operated as the University of Virginia's College at Wise (State Agency 246).

"Covered Employee" means any person who is employed by the University on either a salaried or wage basis.

"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.

"Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.

"Management Agreement" means this agreement between the Commonwealth of Virginia and the University as required by subsection D of § 23-38.88 and Subchapter 3 of the Act.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.

"Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the

6456 University.

6457 "Public institution of higher education" means those two-year and four-year institutions enumerated
6458 in § 23-14 of the Code of Virginia.

6459 "University" means the University of Virginia, consisting of the Academic Division, the College, and
6460 the Medical Center.

6461 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

6462 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability. Subchapter 3 of the
6463 Act provides that, upon the execution of, and as of the effective date for, this Management Agreement,
6464 the University shall become a Covered Institution entitled to be granted by the Commonwealth and to
6465 exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in
6466 this Management Agreement. In general, subject to its management agreement with the Commonwealth,
6467 status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is
6468 intended to replace (i) the post-General Assembly authorization prior-approval system of reviews,
6469 approvals, policies and procedures carried out and implemented by a variety of central State agencies
6470 with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully
6471 responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its
6472 management agreement with the Commonwealth.

6473 SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the
6474 enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board
6475 of Visitors policies attached hereto as Exhibits M through R, shall be subject to the reviews, assessments,
6476 and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint
6477 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or
6478 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or
6479 Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by
6480 law other than the Act.

6481 SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and
6482 limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement;
6483 Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth
6484 and the University agree that the Commonwealth has expressly granted to the University by this
6485 Management Agreement all the powers and authority contained in certain policies adopted by the Board
6486 of Visitors of the University attached hereto as Exhibits M through R and governing (1) the undertaking
6487 and implementation of capital projects, and other acquisition and disposition of property (Exhibit M),
6488 (2) the leasing of property, including capital leases (Exhibit N), (3) information technology (Exhibit O),
6489 (4) the procurement of goods, services, including certain professional services, insurance, and
6490 construction (Exhibit P), (5) human resources (Exhibit Q), and (6) its system of financial management
6491 (Exhibit R), including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to
6492 establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation
6493 authority for non-general funds as provided by the Governor and the General Assembly in the
6494 Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations
6495 contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management
6496 Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits M through
6497 R, the Commonwealth and the University agree that the Commonwealth has expressly granted to the
6498 University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of
6499 Subchapter 3 of the Act.

6500 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
6501 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
6502 of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits M
6503 through R. Consistent with this full and ultimate accountability, however, the Board may, pursuant to
6504 its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this
6505 Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies
6506 adopted by the Board and attached hereto as Exhibits M through R, to a person or persons within the
6507 University.

6508 SECTION 2.1.3. Reimbursement by the University of Certain Costs. By July 1 of each
6509 odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next
6510 biennium to withdraw from any health or other group insurance or risk management program made
6511 available to the University through any agency, body corporate, political subdivision, authority, or other
6512 entity of the Commonwealth, and in which the University is then participating, to enable the
6513 Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to
6514 determine the additional costs to the Commonwealth that would result from any such withdrawal. If
6515 upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from
6516 such health or other group insurance or risk management program, the University shall, pursuant to
6517 subdivision D 2 c of § 23-38.88, reimburse the Commonwealth for all such additional costs attributable

to such withdrawal as determined by the Commonwealth's actuaries.

SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subsection D (2) (c) of § 23-38.88 of the Act, the University has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to the University and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.

SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § 23-38.110 of the Act and subject to the provisions of this Management Agreement, the University may be exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the "Procurement Rules") attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § 23-38.110 of the Act.

Subsection D of § 23-38.110 of the Act requires that the University identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide the University with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position the University to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the University to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the University's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the University and public sector suppliers.

SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the University, the parties agree that the University is not in a position to quantify any such cost savings at this time, although the University expects that there will be cost savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.

SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the University shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq. of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.

As a teaching hospital that is a part of the University as of the Effective Date, the Medical Center shall continue to be characterized as a state government-owned or operated and state-owned teaching hospital for purposes of payments under the State Plan for Medicaid Services adopted pursuant to § 32.1-325 et seq. The University has committed to serve indigent and medically indigent patients through its adoption of the Guidelines for the Eligibility of Indigent and Medically Indigent Persons for Health Care Services at the State University Teaching Hospitals. Pursuant to subsection B of § 23-38.93 of the Act, the Commonwealth, through the Department of Medical Assistance Services, shall, subject to the appropriation in the Appropriation Act in effect, continue to reimburse the full cost of the

6579 provision of care, treatment, health-related and educational services to indigent and medically indigent
6580 patients and continue to treat the Medical Center as a Type One Hospital for purposes of such
6581 reimbursement.

6582 *SECTION 2.1.8. Implied Authority. Pursuant to subsection D 1 of § 23-38.88 of the Act, the only*
6583 *implied authority granted to the University by this Management Agreement is that implied authority that*
6584 *is actually necessary to carry out the expressed grant of financial or operational authority contained in*
6585 *this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as*
6586 *Exhibits M through R.*

6587 *SECTION 2.1.9. Exercise of Authority. The University and the Commonwealth acknowledge and*
6588 *agree that the execution of this Management Agreement constitutes the conclusion of a process that, as*
6589 *of the effective date of this Agreement, confers upon the University the enhanced authority and*
6590 *operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of*
6591 *the Act. Therefore, without any further conditions or requirements, the University shall, on and after the*
6592 *effective date of this Management Agreement, be authorized to exercise the authority conferred upon it*
6593 *by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as*
6594 *Exhibits M through R, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act*
6595 *except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have*
6596 *been limited by this Management Agreement or the Board of Visitors policies attached hereto as*
6597 *Exhibits M through R.*

6598 *The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of*
6599 *§ 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of*
6600 *Visitors of the University shall assume full responsibility for management of the University, subject to*
6601 *the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this*
6602 *Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The*
6603 *Board of Visitors shall be fully accountable for (a) the management of the University as provided in the*
6604 *Act, (b) meeting the requirements of §§ 2.2-5004, 23-9.2:3.02, and 23-9.6:1.01 of the Code of Virginia,*
6605 *and (c) meeting such other provisions as are set forth in this Management Agreement.*

6606 *SECTION 2.2. State Goals.*

6607 *SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education*
6608 *of the Commonwealth by subsection B of § 23-38.88, prior to August 1, 2005, the Board of Visitors of*
6609 *the University adopted the resolution setting forth its commitment to the Governor and the General*
6610 *Assembly to meet the State goals specified in that subsection B. In addition to the above commitments,*
6611 *the University commits to furthering these State goals by:*

6612 *1. In addition to its six-year target of achieving \$337 million in external research by 2011-12, the*
6613 *University commits to match from institutional funds, other than general funds or tuition, on a dollar for*
6614 *dollar basis, any additional research funds provided by the State in the Appropriation Act above the*
6615 *amount provided from institutional funds for research in 2005-06.*

6616 *2. In a concerted effort to provide educational opportunities to Virginia students attending*
6617 *institutions in the Virginia Community College System ("VCCS") and Richard Bland College, the*
6618 *University commits to work with Virginia Polytechnic Institute and State University ("Virginia Tech")*
6619 *and the College of William and Mary in Virginia to establish a program under which these three*
6620 *institutions will increase significantly the number of such students transferring to their institutions.*
6621 *Specifically, pursuant to this program, the University, Virginia Tech and the College of William and*
6622 *Mary in Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard*
6623 *Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students*
6624 *each year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students*
6625 *each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students*
6626 *each year over the number enrolled in 2004-05, for a total of approximately 1,250 such transfer*
6627 *students each year. The three institutions have agreed that they will mutually determine how to divide*
6628 *the responsibility for these additional transfer students equitably among themselves.*

6629 *3. As an institutional priority and obligation, the University commits to the Governor and General*
6630 *Assembly to work meaningfully and visibly with an economically distressed region or local area of the*
6631 *Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in*
6632 *education, income, employment, and other factors. The University commits to establish a formal*
6633 *partnership with that area to develop jointly a specific action plan that builds on the University's*
6634 *programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise*
6635 *to stimulate economic development in the area to make the area more economically viable, and to*
6636 *improve student achievement and teacher and administrator skill sets in a school division in that area.*
6637 *The University shall submit the action plan to the Governor and General Assembly by no later than*
6638 *December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each*
6639 *year on its progress in implementing the action plan during the prior fiscal year.*

6640 *SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the*

Code of Virginia, the University, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia ("SCHEV") by October 1, 2005, an institution-specific Six-Year Plan addressing the University's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § 23-9.2:3.02 requires the University to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement address, among other issues, such matters as the University's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in the University's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the University's Six-Year Plan and the description below meet the requirement of subsection B of § 23-38.97 of the Act.

Subsection B of § 23-38.104 of the Act requires the Board of Visitors of the University to include in this Management Agreement the University's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. The University's commitment in this regard is clear.

The Academic Division will continue to offer enrollment to in-state undergraduate students without regard to ability to pay and shall continue implementation of AccessUVA, a financial aid program designed to keep higher education affordable for all undergraduate students, including Virginians and non-Virginians, who qualify for admission, regardless of economic circumstance. In the fall 2005 AccessUVA was modified to provide expanded benefits for qualifying Virginia Community College System transfer students. The program shall be substantially as described in the remainder of this Section 2.2.2, as may be amended from time to time by the Board of Visitors of the University and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations.

The Academic Division currently offers financial aid packages to meet 100 percent of demonstrated need to all qualified undergraduate students. This goal was met in 2004-05.

The Academic Division will eliminate all need-based loans, replacing them with grants, in the financial-aid packages of low-income undergraduate students, beginning with the fall 2004 entering class. At this time low-income is defined as families with an income equivalent to 200 percent of the federal poverty line or less. This phase will be fully implemented by fall 2007. The University's goals for this component of the program include:

1. Increase enrollment by low-income students.
 2. Improve the socio-economic diversity at the University.
 3. Enable low-income financial aid recipients to have an enhanced student experience.
 4. Improve satisfaction in post graduate choices of low-income financial aid recipients.
- Success in attaining these goals will be measured by five metrics, 1) applications from low-income students, 2) low-income applicants offered admissions, 3) low-income applicants who accepted offers, 4) yield of low-income students, and 5) percentage of low-income students in the student body. In 2005-06 applications from low-income students rose 13.1 percent from the previous year for a total of 875. The University offered admission to 357 applicants, 10 percent more than in the prior year. Almost 40 percent more of those low-income students to whom the University offered admission for the 2005-06 academic year accepted the offer, 233 compared to 133 last year, increasing the yield from 50 percent to over 64 percent. The trend in the percentage of low-income students in the student body has also improved over the last two years increasing from 4.29 percent in 2004-05 to 6.45 percent in 2005-06. The University expects to increase the numbers of low-income students enrolled from the current 830 to 1,033 by 2011-12 as outlined in the Six-Year Plan.

The Academic Division will cap the amount of need-based loans to any undergraduate student who qualifies for some form of financial aid to a maximum of 25 percent of the total in-state cost of attendance over four years and will meet the remaining need with grants, beginning with the fall 2005 first-year or VCCS transfer students. All students, regardless of state residency, will receive the in-state cap level. This phase will be fully implemented by fall 2008. This particular component of the program is targeted at middle-income students whose families earn between \$75,000 and \$149,999. The University's goals for this component of the program include:

1. Improve the socio-economic diversity at the University.
 2. Enable financial aid recipients to have an enhanced student experience.
 3. Improve satisfaction in post graduate choices.
- Success will be measured in this area by three metrics, 1) applications from middle-income students, 2) participation of financial aid recipients in study abroad, internships, volunteer work, student activities, etc., and 3) post graduate choices and starting salaries. Seven percent or 219 more middle-income students applied to the University in 2005-06 than in 2004-05 and qualified for

6702 *AccessUVA benefits.*

6703 *The Academic Division will provide comprehensive counseling to prospective and current students*
6704 *and their families, assisting them in the financial aid application process and presenting them with*
6705 *financing options outside of need-based financial aid. This last component of the program has three*
6706 *main goals:*

6707 *1. Improve the perception of the University as affordable.*

6708 *2. Increase the socio-economic diversity of the University.*

6709 *3. Improve student understanding of financial planning and debt management.*

6710 *The University's financial aid educational programs are currently being designed. We expect to*
6711 *measure trends in the following ways in order to gauge success: 1) usage figures of educational*
6712 *programs provided on financial planning and debt management, 2) percent of financial aid applicants*
6713 *participating in financial management programs, and 3) evaluation of effectiveness of the educational*
6714 *programs.*

6715 *The Commonwealth and the University agree that this commitment meets the requirements of*
6716 *subsection B of § 23-38.104 of the Act.*

6717 *SECTION 2.3. Authority Granted to The University of Virginia's College at Wise. The College shall*
6718 *receive the benefits of the additional financial and operational authority granted by this Management*
6719 *Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits M through R are*
6720 *implemented by the University on behalf of the College, but the College shall not receive any additional*
6721 *independent financial or operational authority as a result of this Management Agreement or the*
6722 *attached Board of Visitors policies beyond the independent financial and operational authority that it*
6723 *had prior to the effective date of this Management Agreement or that it may be granted by law in the*
6724 *future.*

6725 *SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, the University*
6726 *shall be governed and administered in the manner provided not only in this Management Agreement, but*
6727 *also as provided in the Appropriation Act then in effect and the University's Enabling Legislation.*

6728 *SECTION 2.4.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant*
6729 *to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is*
6730 *a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act,*
6731 *or this Management Agreement, or the Board of Visitors policies attached to this Management*
6732 *Agreement as Exhibits M through R, the provisions of the Appropriation Act shall control, and shall*
6733 *continue to control unless provided otherwise by law.*

6734 *SECTION 2.4.2. The University's Enabling Legislation. As provided in subsection C of § 23-38.91 of*
6735 *the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University's*
6736 *Enabling Legislation, the Enabling Legislation shall control, except as provided in subsection A.1.b of*
6737 *§ 23-38.112 of the Act regarding § 23-77.1.*

6738 *SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § 23-38.92 of the*
6739 *Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of*
6740 *this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management,*
6741 *supervision, regulation, and control of public institutions of higher education shall be applicable to the*
6742 *University as provided by the express terms of this Management Agreement. As further provided in*
6743 *subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any*
6744 *provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this*
6745 *Management Agreement shall control.*

6746 *SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of*
6747 *§ 23-38.93 of the Act, for purposes of §§ 2.2-5004, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 23-4.2,*
6748 *23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2, 23-9.2:3,*
6749 *23-9.2:3.02, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, and Chapter 4.9 (§ 23-38.75 et seq.) of the Code*
6750 *of Virginia, the University shall remain a public institution of higher education of the Commonwealth*
6751 *following the effective date of this Management Agreement, and shall retain the authority granted and*
6752 *any obligations required by such provisions, unless and until provided otherwise by law other than the*
6753 *Act. In addition, the University shall retain the authority, and any obligations related to the exercise of*
6754 *such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et*
6755 *seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.),*
6756 *Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.),*
6757 *Chapter 4.4 (§ 23-38.45 et seq.), Chapter 4.4:1 (§ 23-38.53:1 et seq.), Chapter 4.4:2 (§ 23-38.53:4 et*
6758 *seq.), Chapter 4.4:3 (§ 23-38.53:11), Chapter 4.4:4 (§ 23-38.53:12 et seq.), Chapter 4.5 (§ 23-38.54 et*
6759 *seq.), Chapter 4.7 (§ 23-38.70 et seq.), Chapter 4.8 (§ 23-38.72 et seq.), and Chapter 4.9 (§ 23-38.75 et*
6760 *seq.), unless and until provided otherwise by law other than the Act.*

6761 *SECTION 2.4.5. Public Access to Information. As provided in § 23-38.95 of the Act, the University*
6762 *shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information*
6763 *Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct*

business pursuant to § 2.2-3709 and, in all cases, may conduct business as a "state public body" for purposes of subsection B of § 2.2-3708.

SECTION 2.4.6. Conflicts of Interests. As provided in § 23-38.96 of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the University and to its Covered Employees.

SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits M through R.

ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.

SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to subsection D 4 of § 23-38.88 of the Act.

SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.

SECTION 3.2.1. Governor. Pursuant to subsection D 4 of § 23-38.88, and § 23-38.98, of the Act, if the Governor makes a written determination that the University is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the University and to the members of the General Assembly, and (ii) the University shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the University, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, the University shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.

SECTION 3.2.2. General Assembly. As provided in subsection D 4 of § 23-38.88 of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § 23-38.98 of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if the University fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this Management Agreement.

ARTICLE 4. GENERAL PROVISIONS.

SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.

SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § 23-38.88 of the Act, the University and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the University were not governed by the Act; provided that the Virginia Tort Claims Act, § 8.01-195.1 et seq. of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to the University.

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2010.

WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of legislation enacted into law providing for the terms of such Agreement.

MANAGEMENT AGREEMENT
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
THE UNIVERSITY OF VIRGINIA
PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005

POLICY GOVERNING CAPITAL PROJECTS

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) delegated limited but significant autonomy to the University of Virginia to establish its own post-appropriation system for undertaking the implementation of non-general fund capital projects for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act delegated nearly identical limited autonomy to the University as a whole for non-general fund capital projects. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the "Existing Policy Statement").

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as State Agency 207.

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the University of Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

"Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as State Agency 246.

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the

6887 Act.

6888 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
 6889 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
 6890 missions of the individual public institutions of higher education of the Commonwealth, and as provided
 6891 in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.

6892 "Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation
 6893 Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.

6894 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
 6895 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
 6896 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

6897 "Medical Center" means that part of the University consisting of the University of Virginia Medical
 6898 Center (State Agency 209), and related health care and health maintenance facilities.

6899 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
 6900 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
 6901 general government funds, as defined in the December 20, 2004 Report to the Governor and General
 6902 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

6903 "University" means the University of Virginia, consisting of the Academic Division, the College, and
 6904 the Medical Center.

6905 III. SCOPE OF POLICY.

6906 This Policy applies to the planning and budget development for capital projects, capital project
 6907 authorization, and the implementation of capital projects, whether funded by a general fund
 6908 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
 6909 sources.

6910 This Policy provides guidance for 1) the process for developing one or more capital project
 6911 programs for the University, 2) authorization of new capital projects, 3) procurement of Capital
 6912 Professional Services and construction services, 4) design reviews and code approvals for capital
 6913 projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land
 6914 acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting
 6915 requirements.

6916 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

6917 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
 6918 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
 6919 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
 6920 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
 6921 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
 6922 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
 6923 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
 6924 and procedures.

6925 V. CAPITAL PROGRAM.

6926 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt
 6927 a system for developing one or more capital project programs that defines or define the capital needs of
 6928 the University for a given period of time consistent with the University's published Master Plan. This
 6929 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of
 6930 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be
 6931 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from
 6932 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board
 6933 may approve amendments to the program for Major Capital Projects annually or more often if
 6934 circumstances warrant.

6935 It shall be University policy that each capital project program shall meet the University's mission
 6936 and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be
 6937 University policy that each capital project shall be of a size and scope to provide for the defined
 6938 program needs, designed in accordance with all applicable building codes and handicapped accessibility
 6939 standards as well as the University's design guidelines and standards, and costed to reflect current costs
 6940 and escalated to the mid-point of anticipated construction.

6941 VI. AUTHORIZATION OF CAPITAL PROJECTS

6942 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
 6943 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief
 6944 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other
 6945 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund
 6946 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both
 6947 Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies

6948 *then applicable, and shall follow the State's process for capital budget requests.*

6949 *It shall be the policy of the University that the implementation of capital projects shall be carried*
6950 *out so that the capital project as completed is the capital project approved by the Board for Major*
6951 *Capital Projects and according to the procedures adopted by the President, acting through the*
6952 *Executive Vice President and Chief Operating Officer, for all other capital projects. The President,*
6953 *acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence*
6954 *to this requirement.*

6955 *Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond*
6956 *the plans and justifications that were the basis for the capital project's approval, either before or during*
6957 *construction, unless approved in advance as described above. Minor changes shall be permissible if*
6958 *they are determined by the President, acting through the Executive Vice President and Chief Operating*
6959 *Officer, to be justified.*

6960 *Major Capital Projects may be submitted for Board of Visitors authorization at any time but must*
6961 *include a statement of urgency if not part of the approved Major Capital Project program.*

6962 **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION**
6963 **SERVICES.**

6964 *It shall be the policy of the University that procurements shall result in the purchase of high quality*
6965 *services and construction at reasonable prices and shall be consistent with the Policy Governing the*
6966 *Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials*
6967 *adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and*
6968 *Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed*
6969 *to:*

6970 *Seeking competition to the maximum practical degree, taking into account the size of the anticipated*
6971 *procurement, the term of the resulting contract and the likely extent of competition;*

6972 *Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the*
6973 *appearance of any impropriety prohibited by State law or University policy;*

6974 *Making procurement rules clear in advance of any competition;*

6975 *Providing access to the University's business to all qualified vendors, firms and contractors, with no*
6976 *potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage*
6977 *in cooperative procurements and to meet special needs of the University;*

6978 *Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against*
6979 *employees or applicants because of race, religion, color, sex, national origin, age, disability or other*
6980 *basis prohibited by State law except where there is a bona fide occupational qualification reasonably*
6981 *necessary to the contractor's normal operations;*

6982 *Providing for a non-discriminatory procurement process, and including appropriate and lawful*
6983 *provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small*
6984 *businesses and to promote and encourage a diversity of suppliers.*

6985 *The President, acting through the Executive Vice President and Chief Operating Officer, is*
6986 *authorized to develop implementing procedures for the procurement of Capital Professional Services and*
6987 *construction services at the University. The procedures shall implement this Policy and provide for:*

6988 *A system of competitive negotiation for Capital Professional Services, including a procedure for*
6989 *expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,*
6990 *and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of*
6991 *Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

6992 *A prequalification procedure for contractors or products;*

6993 *A procedure for special construction contracting methods, including but not limited to design-build*
6994 *and construction management contracts; and*

6995 *A prompt payment procedure.*

6996 *The University also may enter into cooperative arrangements with other private or public health or*
6997 *educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,*
6998 *in the judgment of the University, the purposes of this Policy will be furthered.*

6999 **VIII. DESIGN REVIEWS AND CODE APPROVALS.**

7000 *The Board of Visitors shall review the design of all Major Capital Projects and shall provide final*
7001 *Major Capital Project authorization based on the size, scope and cost estimate provided with the*
7002 *design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall*
7003 *be required. For all capital projects other than Major Capital Projects, the President, acting through*
7004 *the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and*
7005 *project authorization based on the size, scope and cost estimate provided with the design. It shall be*
7006 *the University's policy that all capital projects shall be designed and constructed in accordance with*
7007 *applicable Virginia Uniform Statewide Building Code ("VUSBC") standards and the applicable*
7008 *accessibility code.*

7009 *The President, acting through the Executive Vice President and Chief Operating Officer, shall*

designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the University on the same capital project.

IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of \$300,000 or more.

X. BUILDING DEMOLITIONS.

It shall be the policy of the University to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.

XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

A. Environmental and Land Use Considerations.

It is the policy of the University to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure

7071 *that, in the case of capital projects involving the acquisition of buildings or land, the project*
7072 *management systems implemented under Section XIII below provide for a review of the following*
7073 *matters prior to acquisition of the building or land: that any land can be developed for its intended*
7074 *purpose without extraordinary cost; that an environmental engineer has been engaged by the University*
7075 *to provide an assessment of any environmental conditions on the land; that there is adequate vehicular*
7076 *ingress and egress to serve the contemplated use of the building or land; that utilities and other services*
7077 *to the land are adequate or can reasonably be provided or have been provided in the case of building*
7078 *acquisitions; and that the condition and grade of the soils have been examined to determine if any*
7079 *conditions exist that would require extraordinary site work or foundation systems.*

7080 *C. Title and Survey.*

7081 *A survey shall be prepared for any real property acquired, and an examination of title to the real*
7082 *property shall be conducted by a licensed attorney or, in the alternative, a commitment for title*
7083 *insurance shall be procured from a title insurance company authorized to do business in the*
7084 *Commonwealth. Based upon the survey and title examination or report, the President, acting through*
7085 *the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real*
7086 *property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens,*
7087 *encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse*
7088 *effect upon the University's ability to own, occupy, convey or develop the real property.*

7089 *D. Appraisal.*

7090 *An appraisal shall be conducted of the real property to be acquired to determine its fair market*
7091 *value and the consistency of the fair market value with the price agreed upon by the University.*

7092 *XII. BUILDING OR LAND DISPOSITIONS.*

7093 *The Board of Visitors shall approve the disposition of any building or land. Disposition of land or*
7094 *buildings, the acquisition or construction of which was funded entirely or in part by a general fund*
7095 *appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both*
7096 *Board of Visitors approval and other approvals in accordance with general law applicable to*
7097 *State-owned property and with the University's Enabling Legislation.*

7098 *XIII. PROJECT MANAGEMENT SYSTEMS.*

7099 *The President, acting through the Executive Vice President and Chief Operating Officer, shall*
7100 *implement one or more systems for the management of capital projects for the University. The systems*
7101 *may include the delegation of project management authority to appropriate University officials,*
7102 *including a grant of authority to such officials to engage in further delegation of authority as the*
7103 *President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.*

7104 *The project management systems for capital projects shall be designed to ensure that such projects*
7105 *comply with the provisions of this Policy and other Board of Visitors policies applicable to closely*
7106 *related subjects such as selection of architects or policies applicable to University buildings and*
7107 *grounds.*

7108 *The project management systems may include one or more reporting systems applicable to capital*
7109 *projects whereby University officials responsible for the management of such projects provide*
7110 *appropriate and timely reports to the President, acting through the Executive Vice President and Chief*
7111 *Operating Officer, on the status of such projects during construction.*

7112 *XIV. REPORTING REQUIREMENTS.*

7113 *In addition to complying with any internal reporting systems contained in the University's project*
7114 *management systems, as described in Section XIII above, the University shall comply with State*
7115 *reporting requirements for those Major Capital Projects funded entirely or in part by a general fund*
7116 *appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project*
7117 *constructs improvements on land, or renovates property, that originally was acquired or constructed in*
7118 *whole or in part with a general fund appropriation for that purpose or proceeds from State Tax*
7119 *Supported Debt, and such improvements or renovations are undertaken entirely with funds not*
7120 *appropriated by the General Assembly and, if the cost of such improvements or renovations is*
7121 *reasonably expected to exceed two million dollars, the decision to undertake such improvements or*
7122 *renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine,*
7123 *the President, acting through the Executive Vice President and Chief Operating Officer, shall report to*
7124 *the Department of General Services on the status of such capital projects at the initiation of the project,*
7125 *prior to the commencement of construction, and at the time of acceptance of any such capital project.*

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EXHIBIT N

MANAGEMENT AGREEMENT
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND

THE UNIVERSITY OF VIRGINIA
PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005

POLICY GOVERNING
LEASES OF REAL PROPERTY

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
POLICY GOVERNING LEASES OF REAL PROPERTY

I. PREAMBLE.

In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the University, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University of Virginia may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

II. DEFINITIONS.

The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:

"Academic Division" means that part of the University known as State Agency 207.

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" means the Rector and Visitors of the University of Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as State Agency 246.

"Covered Institution" means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.

"Expense Lease" means an Operating Lease of real property under the control of another entity to the University.

"Income Lease" means an Operating Lease of real property under the control of the University to another entity.

"Lease" or "Leases" means any type of lease involving real property.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center, known as State Agency 209, and related health care and health maintenance facilities.

"Operating Lease" means any lease involving real property, or improvements thereon, that is not a Capital Lease.

"University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

III. SCOPE OF POLICY.

This Policy provides guidance for the implementation of all University Leases.

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who,

7194 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
 7195 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
 7196 and procedures.

7197 **V. REQUIREMENTS FOR LEASES.**

7198 **A. Factors to Be Considered When Entering into Leases.**

7199 All Leases shall be for a purpose consistent with the mission of the University. The decision to enter
 7200 into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy,
 7201 consideration of all costs of occupancy, and a determination that the use of the property to be leased is
 7202 necessary and is efficiently planned. Leases shall also conform to the space planning procedures that
 7203 may be adopted by the President, acting through the Executive Vice President and Chief Operating
 7204 Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the
 7205 space is intended.

7206 **B. Competition to Be Sought to Maximum Practicable Degree.**

7207 Competition shall be sought to the maximum practicable degree for all Leases. The President, acting
 7208 through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases
 7209 are procured through competition to the maximum degree practicable and to determine when, under
 7210 guidelines that may be developed and adopted by the President, acting through the Executive Vice
 7211 President and Chief Operating Officer, it is impractical to procure Leases through competition.

7212 **C. Approval of Form of Lease Required.**

7213 The form of Leases entered into by the University shall be approved by the University's legal
 7214 counsel.

7215 **D. Execution of Leases.**

7216 All Leases entered into by the University shall be executed only by those University officers or
 7217 persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as
 7218 may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as
 7219 may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital
 7220 Projects adopted by the Board as part of the Management Agreement between the Commonwealth and
 7221 the University, no other University approval shall be required for leases or leasing, nor state approval
 7222 required except in the case of leases of real property as may be governed by general state law in
 7223 accordance with § 23-38.109 and § 23-38.112 of the Act.

7224 **E. Capital Leases.**

7225 The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization
 7226 process included in the Policy Governing Capital Projects adopted by the Board as part of the
 7227 Management Agreement between the Commonwealth and the University.

7228 **F. Compliance with Applicable Law.**

7229 All Leases of real property by the University shall be consistent with any requirements of law that
 7230 are contained in the Act or are otherwise applicable.

7231 **G. Certification of Occupancy.**

7232 All real property covered by an Expense Lease or leased by the University under a Capital Lease
 7233 shall be certified for occupancy by the appropriate public body or building official.

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EXHIBIT O

**MANAGEMENT AGREEMENT
 BETWEEN
 THE COMMONWEALTH OF VIRGINIA
 AND
 THE UNIVERSITY OF VIRGINIA
 PURSUANT TO**

**THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT
 OF 2005**

**POLICY GOVERNING
 INFORMATION TECHNOLOGY**

**THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
 POLICY GOVERNING INFORMATION TECHNOLOGY**

I. PREAMBLE.

7252 The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter
 7253 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions
 7254 of higher education in the Commonwealth of Virginia that have entered into a Management Agreement
 7255 with the Commonwealth "may be exempt from the provisions governing the Virginia Information

Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between the Commonwealth and the University that incorporates this Policy.

The Board of Visitors of the University of Virginia is authorized to adopt this Information Technology Policy pursuant to § 23-38.111 of the Code of Virginia.

II. DEFINITIONS.

As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as State Agency 207.

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as State Agency 246.

"Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

"Major information technology project" or "major IT project" shall have the same meaning as set forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center, known as State Agency 209, and related health care and health maintenance facilities.

"Policy" means this Information Technology Policy adopted by the Board of Visitors.

"State Chief Information Officer" or "State CIO" means the Chief Information Officer of the Commonwealth of Virginia.

"University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

III. SCOPE OF POLICY.

This Policy is intended to cover and implement the authority that may be granted to the University of Virginia pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University's enabling legislation as that term is defined in § 23-38.89 of the Act. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

This Policy shall govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University. Upon the effective date of a Management Agreement between the Commonwealth and the University, as authorized by subsection D of § 23-38.88 and § 23-38.111, therefore, the University shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, however, that the University still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the University.

The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.

IV. GENERAL PROVISIONS.

A. Board of Visitors Accountability and Delegation of Authority.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the

7317 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
7318 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
7319 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
7320 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
7321 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
7322 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
7323 and procedures.

7324 B. Strategic Planning.

7325 The President, acting through the Executive Vice President and Chief Operating Officer, shall be
7326 responsible for overall IT strategic planning at the University, which shall be linked to and in support
7327 of the University's overall strategic plan.

7328 At least 45 days prior to each fiscal year, the President, acting through the Executive Vice President
7329 and Chief Operating Officer, shall make available the University's IT strategic plan covering the next
7330 fiscal year to the State CIO for his review and comment with regard to the consistency of the
7331 University's plan with the intent of the currently published overall five-year IT strategic plan for the
7332 Commonwealth developed by the State CIO pursuant to § 2.2-2007 of the Code of Virginia and into
7333 which the University's plan is to be incorporated.

7334 C. Expenditure Reporting and Budgeting .

7335 The President, acting through the Executive Vice President and Chief Operating Officer, shall
7336 approve and be responsible for overall IT budgeting and investments at the University. The University's
7337 IT budget and investments shall be linked to and in support of the University's IT strategic plan, and
7338 shall be consistent with general University policies, the Board-approved annual operating budget, and
7339 other Board approvals for certain procurements.

7340 By October 1 of each year, the President, acting through the Executive Vice President and Chief
7341 Operating Officer, shall make available to the State CIO and the Information Technology Investment
7342 Board a report on the previous fiscal year's IT expenditures.

7343 The University shall be specifically exempt from:

7344 Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget
7345 requests) as it currently exists and from time to time may be amended;

7346 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as
7347 they currently exist and from time to time may be amended; and

7348 any other substantially similar provision of the Code of Virginia governing IT expenditure reporting
7349 and budgeting, as it currently exists and from time to time may be amended.

7350 D. Project Management.

7351 Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies,
7352 standards, and guidelines developed by the Commonwealth or those based upon industry best practices
7353 for project management as defined by leading IT consulting firms, leading software development firms,
7354 or a nationally-recognized project management association, appropriately tailored to the specific
7355 circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made
7356 available to the Information Technology Investment Board.

7357 The President, acting through the Executive Vice President and Chief Operating Officer, shall
7358 oversee the management of all University IT projects. IT projects may include, but are not limited to,
7359 upgrades to network infrastructure, provision of technology to support research, database development,
7360 implementation of new applications, and development of IT services for students, faculty, staff, and
7361 patients. Day-to-day management of projects shall be the responsibility of appointed project directors
7362 and shall be in accord with the project management policies, standards, and guidelines adopted by the
7363 Board, as amended and revised from time to time.

7364 On a quarterly basis, the President, acting through the Executive Vice President and Chief Operating
7365 Officer, shall report to the Information Technology Investment Board on the budget, schedule, and
7366 overall status of the University's major IT projects. This requirement shall not apply to research
7367 projects, research initiatives, or instructional programs.

7368 The President, acting through the Executive Vice President and Chief Operating Officer, shall be
7369 responsible for decisions to substantially alter a project's scope, budget, or schedule after initial
7370 approval.

7371 The University shall be specifically exempt from:

7372 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project
7373 management) as it currently exists and from time to time may be amended;

7374 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management)
7375 as they currently exist and from time to time may be amended; and

7376 any other substantially similar provision of the Code of Virginia governing IT project management,
7377 as it currently exists or from time to time may be amended.

7378 The State CIO and the Information Technology Investment Board shall continue to have the authority

regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.

E. Infrastructure, Architecture, Ongoing Operations, and Security.

Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the University. Copies of the policies shall be made available to the Information Technology Investment Board.

The President, acting through the executive Vice President and Chief Operating Officer, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.

For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.

F. Audits.

Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing association, appropriately tailored to the specific circumstances of the University, which provide for Independent Validation and Verification ("IV&V") of the University's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.

Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the University's Internal Audit Department and the Auditor of Public Accounts.

EXHIBIT P

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING THE PROCUREMENT OF GOODS, SERVICES, INSURANCE, AND CONSTRUCTION AND THE DISPOSITION OF SURPLUS MATERIALS THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING THE PROCUREMENT OF GOODS, SERVICES, INSURANCE AND CONSTRUCTION AND THE DISPOSITION OF SURPLUS MATERIALS

I. PREAMBLE.

A. Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) provided the University of Virginia with autonomy to conduct the procurement of goods and services, including professional services, and construction, on behalf of the University of Virginia Medical Center. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that the University of Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing

7440 *Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1,*
7441 *constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods,*
7442 *services, insurance, and construction, and the disposition of surplus materials by the University.*

7443 *C. This Policy is intended to cover the authority that may be granted to the University pursuant to*
7444 *Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any*
7445 *other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and*
7446 *the University's Enabling Legislation are not affected by this Policy. In particular, other powers and*
7447 *authorities granted to the Medical Center by law, to the extent they exceed those granted to the*
7448 *University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

7449 *II. DEFINITIONS.*

7450 *As used in this Policy, the following terms shall have the following meanings, unless the context*
7451 *requires otherwise:*

7452 *"Academic Division" means that part of the University known as state agency 207.*

7453 *"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*
7454 *Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*

7455 *"Agreement" means "Management Agreement".*

7456 *"Board of Visitors" means the Rector and Visitors of the University of Virginia.*

7457 *"College" means that part of the University operated as the University of Virginia's College at Wise,*
7458 *also known as state agency 246.*

7459 *"Covered Institution" means, on and after the Effective Date of its initial Management Agreement*
7460 *with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that*
7461 *has entered into a Management Agreement with the Commonwealth to be governed by the provisions of*
7462 *Subchapter 3 of the Act.*

7463 *"Effective Date" means the effective date of the Management Agreement.*

7464 *"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of*
7465 *Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and*
7466 *missions of the individual public institutions of higher education of the Commonwealth, and as provided*
7467 *in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.*

7468 *"Existing Medical Center Policy Statement" means the Policy Statement Governing Exercise of*
7469 *Procurement Autonomy by the University on behalf of the Medical Center adopted in 1996 by the Board*
7470 *of Visitors for the Medical Center.*

7471 *"Goods" means all material, equipment, supplies, and printing, including information technology and*
7472 *telecommunications goods such as automated data processing hardware and software.*

7473 *"Management Agreement" means the agreement required by subsection D of § 23-38.88 between the*
7474 *Commonwealth of Virginia and the University of Virginia.*

7475 *"Medical Center" means that part of the University consisting of the University of Virginia Medical*
7476 *Center, known as state agency 209, and related health care and health maintenance facilities.*

7477 *"Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction"*
7478 *attached to this Policy as Attachment 1.*

7479 *"Services" as used in this Policy means any work performed by an independent contractor wherein*
7480 *the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of*
7481 *equipment, materials and supplies, and shall include both professional services, which include the*
7482 *practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and*
7483 *nonprofessional services, which include any service not specifically identified as professional services.*

7484 *"Surplus materials" means personal property including, but not limited to, materials, supplies,*
7485 *equipment and recyclable items, that are determined to be surplus by the University.*

7486 *"University" means the University of Virginia, consisting of the Academic Division, the College, and*
7487 *the Medical Center.*

7488 *III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

7489 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*
7490 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*
7491 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*
7492 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*
7493 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*
7494 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*
7495 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*
7496 *and procedures.*

7497 *IV. GENERAL PROVISIONS.*

7498 *A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement*
7499 *Policies.*

7500 *The Academic Division and the College, through its administrative relationship with the University,*
7501 *have had decentralization and pilot program autonomy in many procurement functions and activities*

since the Appropriation Act of 1994. Effective July 1, 1996, the University was granted autonomy to establish a procurement system for the Medical Center, and the Board of Visitors approved the Existing Medical Center Policy Statement. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the University to develop a procurement system for the Academic Division and the College, as well as a surplus materials disposition system for the University as a whole, and to continue the existing procurement system and policies of the Medical Center. Any University electronic procurement system, other than the Medical Center's electronic procurement system, shall integrate or interface with the Commonwealth's electronic procurement system.

This Policy shall be effective on the Effective Date of the University's initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer or his designee, to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the University, including policies regarding the nature and amounts of procurements that may be undertaken without the approval of the Board of Visitors, or of the President, acting through the Executive Vice President and Chief Operating Officer.

B. Scope and Purpose of University Procurement Policies.

This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the University that procurements conducted by the University result in the purchase of high quality goods and services at reasonable prices, and that the University be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the University to do business in a competitive environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the University, regardless of the source of funds.

C. Collaboration, Communication, and Cooperation with the Commonwealth.

The University is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration and Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the University and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.

D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.

The University is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.

Consistent with this commitment, the University:

i) may purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the University shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;

ii) shall use directly or by integration or interface the Commonwealth's electronic procurement system and comply with the business plan for the Commonwealth's electronic procurement system, as modified by an agreement between the Commonwealth and the University, which agreement shall not be substantially different than the agreement attached to this Policy as Attachment 2 ; and

iii) shall adopt a small, woman-owned, and minority-owned ("SWAM") business program that is consistent with the Commonwealth's SWAM program.

E. Implementation.

To effect its implementation under the Act, and if the University remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2, except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ 2.2-1124 and 1125; the requirement to purchase from the

7563 Department for the Blind and Vision Impaired ("VIB") (§ 2.2-1117); and any other state statutes, rules,
7564 regulations or requirements relating to the procurement of goods, services, insurance, and construction,
7565 including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the
7566 duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department
7567 of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review
7568 and the oversight by the Division of Engineering and Buildings of the Virginia Department of General
7569 Services of contracts for the construction of University capital projects and construction-related
7570 professional services (§ 2.2-1132).

7571 V. UNIVERSITY PROCUREMENT POLICIES.

7572 A. General Competitive Principles.

7573 In connection with University procurements and the processes leading to award of contracts for
7574 goods, services, insurance, and construction, the University is committed to:

7575 seeking competition to the maximum practical degree, taking into account the size of the anticipated
7576 procurement, the term of the resulting contract and the likely extent of competition;

7577 conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or
7578 the appearance of any impropriety;

7579 making procurement rules clear in advance of any competition;

7580 providing access to the University's business to all qualified vendors, firms and contractors, with no
7581 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage
7582 in cooperative procurements and to meet special needs of the University;

7583 ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular
7584 vendor; and

7585 providing for the free exchange of information between the University, vendors, firms or contractors
7586 concerning the goods or services sought and offered while preserving the confidentiality of proprietary
7587 information.

7588 B. Access to Records.

7589 Procurement records shall be available to citizens or to interested persons, firms or corporations in
7590 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et
7591 seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to
7592 § 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia
7593 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.

7594 C. Cooperative Procurements and Alliances.

7595 In circumstances where the University determines and documents that statewide contracts for goods
7596 and services, including information technology and telecommunications goods and services, do not
7597 provide goods and services to the University that meet its business goals and objectives, the University
7598 is authorized to participate in cooperative procurements with other public or private organizations or
7599 entities, including other educational institutions, public-private partnerships, public bodies, charitable
7600 organizations, health care provider alliances and purchasing organizations, so long as the resulting
7601 contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing
7602 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1
7603 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative
7604 contract with a private organization or public-private partnership and the contract was not competitively
7605 procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods,
7606 Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by
7607 other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the
7608 above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's
7609 electronic procurement system, including the requirement for payment of applicable fees. By October 1
7610 of each year, the President, acting through the Executive Vice President and Chief Operating Officer,
7611 shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit
7612 and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and
7613 alliances entered into or used during the prior fiscal year.

7614 D. Training; Ethics in Contracting.

7615 The President, acting through the Executive Vice President and Chief Operating Officer, shall take
7616 all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged
7617 in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of
7618 the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement
7619 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only
7620 officials authorized by this Policy and any procedures adopted by the President, acting through the
7621 Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and
7622 engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.

7623 The University shall maintain an ongoing program to provide professional development opportunities
7624 to its buying staff and to provide methods training to internal staff who are engaged in placing

decentralized small purchase transactions.

E. Ethics and University Procurements.

In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2.

VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the University and the retention of the resulting proceeds by the University.

VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

The President, acting through the Executive Vice President and Chief Operating Officer or his designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures for the Academic Division and the College, which, in addition to the Rules, implement applicable provisions of law and this Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the University. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate University officials who shall oversee University procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.

Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall become effective on the Effective Date of the University's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the University on behalf of the University for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the University shall not affect existing contracts already in effect.

The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with University procedures specific to the Acquisition of Goods and Services. The Rules and University implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.

VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

A. Protests, Appeals and Debarment.

The Rules and University implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and University implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.

B. Prompt Payment of Contractors and Subcontractors.

The Rules and University implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the University.

C. Types of Procurements.

The Rules and University implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract,

7686 *and the needs of the University. Such policies and procedures may include special provisions for*
 7687 *procurements such as emergency procurements, sole source procurements, brand name procurements,*
 7688 *small purchases, procurements in which only one qualified vendor responds, and others.*

7689 *D. Approval and Public Notice of Procurements*

7690 *The Rules and University implementing policies and procedures shall provide for approval of*
 7691 *solicitation documents by an authorized individual and for reasonable public notice of procurements,*
 7692 *given the size and nature of the need and the applicability of any Virginia Freedom of Information Act*
 7693 *exemption.*

7694 *E. Administration of Contracts.*

7695 *The Rules and University implementing policies and procedures shall contain provisions related to*
 7696 *the administration of contracts, including contract claims, modifications, extensions and assignments.*

7697 *F. Non-Discrimination.*

7698 *The Rules and University implementing policies and procedures shall provide for a*
 7699 *non-discriminatory procurement process that prohibits discrimination because of race, religion, color,*
 7700 *sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall*
 7701 *include appropriate provisions to effectuate fair and reasonable consideration of women-owned,*
 7702 *minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

7703

7704 ATTACHMENT I

7705

7706 *Rules Governing Procurement of Goods, Services, Insurance, and Construction* 7707 *by a Public Institution of Higher Education of the Commonwealth of Virginia* 7708 *Governed by Subchapter 3 of the*

7709 *Restructured Higher Education Financial and Administrative Operations Act,*

7710 *Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia*

7711 *In accordance with the provisions of the Restructured Higher Education Financial and*
 7712 *Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of*
 7713 *Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher*
 7714 *education of the Commonwealth of Virginia that has entered into a Management Agreement with the*
 7715 *Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing*
 7716 *Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods,*
 7717 *services, insurance, and construction by the Institution, excluding the University of Virginia Medical*
 7718 *Center:*

7719 *§ 1. Purpose. - The purpose of these Rules is to enunciate the public policies pertaining to*
 7720 *procurement of good, services, insurance, and construction by the Institution from nongovernmental*
 7721 *sources, to include governmental procurement that may or may not result in monetary consideration for*
 7722 *either party. These Rules shall apply whether the consideration is monetary or nonmonetary and*
 7723 *regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

7724 *§ 2. Scope of Procurement Authority. - Subject to these Rules, and the Institution's continued*
 7725 *substantial compliance with the terms and conditions of its Management Agreement with the*
 7726 *Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the*
 7727 *Institution shall have and shall be authorized to have and exercise all of the authority relating to*
 7728 *procurement of goods, services, insurance, and construction, including but not limited to capital*
 7729 *outlay-related procurement and information technology-related procurement, that Institutions are*
 7730 *authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

7731 *§ 3. Competition is the Priority. - To the end that the Institution shall obtain high quality goods and*
 7732 *services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial*
 7733 *manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have*
 7734 *access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the*
 7735 *intent of the governing body of the Institution that competition be sought to the maximum feasible*
 7736 *degree, that procurement procedures involve openness and administrative efficiency, that individual*
 7737 *public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing*
 7738 *contract awards be made clear in advance of the competition, that specifications reflect the procurement*
 7739 *needs of the purchasing body rather than being drawn to favor a particular vendor, and that the*
 7740 *purchaser and vendor freely exchange information concerning what is sought to be procured and what*
 7741 *is offered. The Institution may consider best value concepts when procuring goods and nonprofessional*
 7742 *services, but not construction or professional services. Professional services will be procured using a*
 7743 *qualification-based selection process. The criteria, factors, and basis for consideration of best value and*
 7744 *the process for the consideration of best value shall be as stated in the procurement solicitation.*

7745 *§ 4. Definitions. - As used in these Rules:*

7746 *"Affiliate" means an individual or business that controls, is controlled by, or is under common*
 7747 *control with another individual or business. A person controls an entity if the person owns, directly or*

indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.

Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.

- b. Procurement of other than professional services. Selection shall be made of two or more offerors

7809 *deemed to be fully qualified and best suited among those submitting proposals, on the basis of the*
7810 *factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.*
7811 *Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered,*
7812 *but need not be the sole determining factor. After negotiations have been conducted with each offeror*
7813 *so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and*
7814 *shall award the contract to that offeror. When the terms and conditions of multiple awards are so*
7815 *provided in the Request for Proposal, awards may be made to more than one offeror. Should the*
7816 *Institution determine in writing and in its sole discretion that only one offeror has made the best*
7817 *proposal, a contract may be negotiated and awarded to that offeror.*

7818 *"Competitive sealed bidding" is a method of contractor selection, other than for professional*
7819 *services, which includes the following elements:*

7820 *1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications*
7821 *and contractual terms and conditions applicable to the procurement. Unless the Institution has provided*
7822 *for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite*
7823 *qualifications of potential contractors. When it is impractical to prepare initially a purchase description*
7824 *to support an award based on prices, an Invitation to Bid may be issued requesting the submission of*
7825 *unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been*
7826 *qualified under the criteria set forth in the first solicitation.*

7827 *2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by*
7828 *publication on the Department of General Services' central electronic procurement website. Public*
7829 *notice also may be published in a newspaper of general circulation or on other appropriate websites, or*
7830 *both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations*
7831 *shall include businesses selected from a list made available by the Department of Minority Business*
7832 *Enterprise.*

7833 *3. Public opening and announcement of all bids received.*

7834 *4. Evaluation of bids based upon the requirements set forth in the invitation, which may include*
7835 *special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria*
7836 *such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose,*
7837 *which are helpful in determining acceptability.*

7838 *5. Award to the lowest responsive and responsible bidder. When the terms and conditions of*
7839 *multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

7840 *"Construction" means building, altering, repairing, improving or demolishing any structure, building*
7841 *or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

7842 *"Construction management contract" means a contract in which a party is retained by the owner to*
7843 *coordinate and administer contracts for construction services for the benefit of the owner, and may also*
7844 *include, if provided in the contract, the furnishing of construction services to the owner.*

7845 *"Covered Institution" or "Institution" means, on and after the effective date of the initial management*
7846 *agreement with the Commonwealth of Virginia, a public institution of higher education of the*
7847 *Commonwealth that has entered into a management agreement with the Commonwealth to be governed*
7848 *by the provisions of Subchapter 3 of the Restructuring Act.*

7849 *"Design-build contract" means a contract between the Institution and another party in which the*
7850 *party contracting with the Institution agrees to both design and build the structure, roadway or other*
7851 *item specified in the contract.*

7852 *"Goods" means all material, equipment, supplies, and printing, including information technology and*
7853 *telecommunications goods such as automated data processing hardware and software.*

7854 *"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of*
7855 *the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or*
7856 *delivery schedule for the goods, services or construction being procured.*

7857 *"Multiphase professional services contract" means a contract for the providing of professional*
7858 *services where the total scope of work of the second or subsequent phase of the contract cannot be*
7859 *specified without the results of the first or prior phase of the contract.*

7860 *"Nonprofessional services" means any services not specifically identified as professional services in*
7861 *the definition of professional services and includes small construction projects valued not over*
7862 *\$1,000,000; provided that subdivision 3a of the definition of "competitive negotiation" in this section*
7863 *shall still apply to professional services for such small construction projects.*

7864 *"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who,*
7865 *at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the*
7866 *sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured*
7867 *under the contract, and who at such time is eligible and qualified in all respects to perform that*
7868 *contract, and who would have been eligible and qualified to submit a bid or proposal had the contract*
7869 *been procured through competitive sealed bidding or competitive negotiation.*

7870 *"Professional services" means work performed by an independent contractor within the scope of the*

7871 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
7872 dentistry, medicine, optometry, pharmacy or professional engineering.

7873 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
7874 post, commission, committee, institution, board or political subdivision created by law to exercise some
7875 sovereign power or to perform some governmental duty, and empowered by law to undertake the
7876 activities described in these Rules.

7877 "Public contract" means an agreement between the Institution and a nongovernmental source that is
7878 enforceable in a court of law.

7879 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
7880 fully the contract requirements and the moral and business integrity and reliability that will assure good
7881 faith performance, and who has been prequalified, if required.

7882 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
7883 to the Invitation to Bid.

7884 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
7885 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7886 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
7887 adopted by the governing body of the Covered Institution.

7888 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
7889 goods or nonprofessional services through real-time electronic bidding, with the award being made to
7890 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
7891 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
7892 established for bid opening.

7893 "Services" means any work performed by an independent contractor wherein the service rendered
7894 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
7895 and supplies.

7896 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
7897 environment and individual goals that utilizes work experience and related services for assisting the
7898 handicapped person to progress toward normal living and a productive vocational status.

7899 § 5. Methods of procurement. -

7900 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
7901 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,
7902 or competitive negotiation as provided in this section, unless otherwise authorized by law.

7903 B. Professional services shall be procured by competitive negotiation. Qualification-based selection
7904 shall be used for design services.

7905 C. Goods, services, or insurance may be procured by competitive negotiation.

7906 D. Construction may be procured only by competitive sealed bidding, except that competitive
7907 negotiation may be used in the following instances upon a determination made in advance by the
7908 Institution and set forth in writing that competitive sealed bidding is either not practicable or not
7909 fiscally advantageous to the public, which writing shall document the basis for this determination:

7910 1. By the Institution on a fixed price design-build basis or construction management basis under
7911 § 7;

7912 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;

7913 3. By the Institution for the construction of highways and any draining, dredging, excavation,
7914 grading or similar work upon real property; or

7915 E. Upon a determination in writing that there is only one source practicably available for that
7916 which is to be procured, a contract may be negotiated and awarded to that source without competitive
7917 sealed bidding or competitive negotiation. The writing shall document the basis for this determination.
7918 The Institution shall issue a written notice stating that only one source was determined to be practicably
7919 available, and identifying that which is being procured, the contractor selected, and the date on which
7920 the contract was or will be awarded. This notice shall be posted in a designated public area, which may
7921 be the Department of General Services' website for the Commonwealth's central electronic procurement
7922 system, or published in a newspaper of general circulation on the day the Institution awards or
7923 announces its decision to award the contract, whichever occurs first. Public notice shall also be
7924 published on the Department of General Services' website for the Commonwealth's central electronic
7925 procurement system and may be published on other appropriate websites.

7926 F. In case of emergency, a contract may be awarded without competitive sealed bidding or
7927 competitive negotiation; however, such procurement shall be made with such competition as is
7928 practicable under the circumstances. A written determination of the basis for the emergency and for the
7929 selection of the particular contractor shall be included in the contract file. The Institution shall issue a
7930 written notice stating that the contract is being awarded on an emergency basis, and identifying that
7931 which is being procured, the contractor selected, and the date on which the contract was or will be

7932 awarded. This notice shall be posted in a designated public area, which may be the Department of
7933 General Services' website for the Commonwealth's central electronic procurement system, or published
7934 in a newspaper of general circulation on the day the Institution awards or announces its decision to
7935 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may
7936 also be published on the Department of General Services' website for the Commonwealth's central
7937 electronic procurement system and other appropriate websites.

7938 G. The Institution may establish purchase procedures, if adopted in writing, not requiring
7939 competitive sealed bids or competitive negotiation for single or term contracts for goods and services
7940 other than professional services if the aggregate or the sum of all phases is not expected to exceed
7941 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

7942 H. The Institution may establish purchase procedures, if adopted in writing, not requiring
7943 competitive negotiation for single or term contracts for professional services if the aggregate or the sum
7944 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide
7945 for competition wherever practicable.

7946 I. Upon a determination made in advance by the Institution and set forth in writing that the
7947 purchase of goods, products or commodities from a public auction sale is in the best interests of the
7948 public, such items may be purchased at the auction, including online public auctions. The writing shall
7949 document the basis for this determination.

7950 J. The purchase of goods or nonprofessional services, but not construction or professional services,
7951 may be made by reverse auctioning.

7952 § 6. Cooperative procurement. -

7953 A. In circumstances where the Institution determines and documents that statewide contracts for
7954 goods and services, including information technology and telecommunications goods and services, do
7955 not provide goods and services to the Institution that meet its business goals and objectives, the
7956 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement
7957 arrangement on behalf of or in conjunction with public bodies, public or private health or educational
7958 institutions, other public or private organizations or entities, including public-private partnerships,
7959 charitable organizations, health care provider alliances or purchasing organizations or entities, or with
7960 public agencies or institutions or group purchasing organizations of the several states, territories of the
7961 United States, or the District of Columbia, for the purpose of combining requirements to effect cost
7962 savings or reduce administrative expense in any acquisition of goods and services, other than
7963 professional services. The Institution may purchase from any authority, department, agency, institution,
7964 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not
7965 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to
7966 bid specified that the procurement was being conducted on behalf of other public bodies. In such
7967 instances, deviation from the procurement procedures set forth in these Rules and the administrative
7968 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of
7969 the above, use of cooperative contracts shall conform to the business requirements of the
7970 Commonwealth's electronic procurement system, including the requirement for payment of applicable
7971 fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee
7972 that will allow for participation in any such arrangement.

7973 B. In circumstances where statewide contracts for goods and services, including information
7974 technology and telecommunications goods and services, do not provide goods and services to meet the
7975 Institution's business goals and objectives, and as authorized by the United States Congress and
7976 consistent with applicable federal regulations, and provided the terms of the contract permit such
7977 purchases:

7978 1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services
7979 Administration contract or a contract awarded by any other agency of the U.S. government; and

7980 2. The Institution may purchase telecommunications and information technology goods and
7981 nonprofessional services from a U.S. General Services Administration contract or a contract awarded by
7982 any other agency of the U.S. government.

7983 § 7. Design-build or construction management contracts authorized. -

7984 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
7985 price design-build basis or construction management basis in accordance with the provisions of this
7986 section.

7987 B. Procurement of construction by the design-build or construction management method shall be a
7988 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
7989 qualifications. Based upon the information submitted and any other relevant information which the
7990 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
7991 selected by the Commonwealth and requested to submit proposals.

7992 § 8. Modification of the contract. -

7993 A. A contract awarded by the Institution may include provisions for modification of the contract

during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.

§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The Institution shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The Institution shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the "performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

8055 § 12. *Use of brand names.* - Unless otherwise provided in the Invitation to Bid, the name of a
8056 certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or
8057 manufacturer named and shall be deemed to convey the general style, type, character, and quality of the
8058 article desired. Any article that the Institution in its sole discretion determines to be the equal of that
8059 specified, considering quality, workmanship, economy of operation, and suitability for the purpose
8060 intended, shall be accepted.

8061 § 13. *Comments concerning specifications.* - The Institution shall establish procedures whereby
8062 comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal
8063 can be received and considered prior to the time set for receipt of bids or proposals or award of the
8064 contract.

8065 § 14. *Prequalification generally; prequalification for construction.* -

8066 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or
8067 construction, and consideration of bids or proposals limited to prequalified contractors. Any
8068 prequalification procedure shall be established in writing and sufficiently in advance of its
8069 implementation to allow potential contractors a fair opportunity to complete the process.

8070 B. Any prequalification of prospective contractors for construction by the Institution shall be
8071 pursuant to a prequalification process for construction projects adopted by the Institution. The process
8072 shall be consistent with the provisions of this section.

8073 The application form used in such process shall set forth the criteria upon which the qualifications
8074 of prospective contractors will be evaluated. The application form shall request of prospective
8075 contractors only such information as is appropriate for an objective evaluation of all prospective
8076 contractors pursuant to such criteria. The form shall allow the prospective contractor seeking
8077 prequalification to request, by checking the appropriate box, that all information voluntarily submitted
8078 by the contractor pursuant to this subsection shall be considered a trade secret or proprietary
8079 information subject to the provisions of subsection D of § 34 of these Rules.

8080 In all instances in which the Institution requires prequalification of potential contractors for
8081 construction projects, advance notice shall be given of the deadline for the submission of
8082 prequalification applications. The deadline for submission shall be sufficiently in advance of the date
8083 set for the submission of bids for such construction so as to allow the procedures set forth in this
8084 subsection to be accomplished.

8085 At least thirty days prior to the date established for submission of bids or proposals under the
8086 procurement of the contract for which the prequalification applies, the Institution shall advise in writing
8087 each contractor who submitted an application whether that contractor has been prequalified. In the
8088 event that a contractor is denied prequalification, the written notification to the contractor shall state
8089 the reasons for the denial of prequalification and the factual basis of such reasons.

8090 A decision by the Institution denying prequalification under the provisions of this subsection shall be
8091 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

8092 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the
8093 following:

8094 1. The contractor does not have sufficient financial ability to perform the contract that would result
8095 from such procurement. If a bond is required to ensure performance of a contract, evidence that the
8096 contractor can acquire a surety bond from a corporation included on the United States Treasury list of
8097 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to
8098 establish the financial ability of the contractor to perform the contract resulting from such procurement;

8099 2. The contractor does not have appropriate experience to perform the construction project in
8100 question;

8101 3. The contractor or any officer, director or owner thereof has had judgments entered against him
8102 within the past ten years for the breach of contracts for governmental or nongovernmental construction,
8103 including, but not limited to, design-build or construction management;

8104 4. The contractor has been in substantial noncompliance with the terms and conditions of prior
8105 construction contracts with the Institution without good cause. If the Institution has not contracted with
8106 a contractor in any prior construction contracts, the Institution may deny prequalification if the
8107 contractor has been in substantial noncompliance with the terms and conditions of comparable
8108 construction contracts with another public body without good cause. The Institution may not utilize this
8109 provision to deny prequalification unless the facts underlying such substantial noncompliance were
8110 documented in writing in the prior construction project file and such information relating thereto given
8111 to the contractor at that time, with the opportunity to respond;

8112 5. The contractor or any officer, director, owner, project manager, procurement manager or chief
8113 financial official thereof has been convicted within the past ten years of a crime related to governmental
8114 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6
8115 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental
8116 Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any

substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.

§ 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. Cancellation, rejection of bids; waiver of informalities. -

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.

§ 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.

§ 19. Purchase programs for recycled goods; Institution responsibilities. -

A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.

§ 20. Preference for Virginia products with recycled content and for Virginia firms. -

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

§ 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

§ 22. Preference for recycled paper and paper products used by the Institution. -

A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than ten percent greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

§ 23. Withdrawal of bid due to error. -

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was

8178 submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and
8179 was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of
8180 work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error
8181 or unintentional omission can be clearly shown by objective evidence drawn from inspection of original
8182 work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

8183 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from
8184 consideration if the price bid would have been substantially lower than the other bids due solely to the
8185 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of
8186 work, labor or material made directly in the compilation of a bid that shall be clearly shown by
8187 objective evidence drawn from inspection of original work papers, documents and materials used in the
8188 preparation of the bid sought to be withdrawn.

8189 One of the following procedures for withdrawal of a bid shall be selected by the Institution and
8190 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to
8191 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall
8192 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or
8193 designated official his original work papers, documents and materials used in the preparation of the bid
8194 within one day after the date fixed for submission of bids. The work papers shall be delivered by the
8195 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either
8196 instance, the work papers, documents and materials may be considered as trade secrets or proprietary
8197 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened
8198 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder
8199 shall have two hours after the opening of bids within which to claim in writing any mistake as defined
8200 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour
8201 period has elapsed. The mistake shall be proved only from the original work papers, documents and
8202 materials delivered as required herein.

8203 B. The Institution may establish procedures for the withdrawal of bids for other than construction
8204 contracts.

8205 C. No bid shall be withdrawn under this section when the result would be the awarding of the
8206 contract on another bid of the same bidder or of another bidder in which the ownership of the
8207 withdrawing bidder is more than five percent.

8208 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed
8209 to be the low bid.

8210 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or
8211 labor to or perform any subcontract or other work agreement for the person or firm to whom the
8212 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
8213 which the withdrawn bid was submitted.

8214 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
8215 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the
8216 bid price, provided such bidder is a responsible and responsive bidder.

8217 § 24. Contract Pricing Arrangements. -

8218 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
8219 basis that is not prohibited by these Rules.

8220 B. Except in case of emergency affecting the public health, safety or welfare, no public contract
8221 shall be awarded on the basis of cost plus a percentage of cost.

8222 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis
8223 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in
8224 whole or part as a percentage of such claims, shall not be prohibited by this section.

8225 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

8226 A. No contractor shall perform any work on a construction project of the Institution unless he (i)
8227 has obtained, and continues to maintain for the duration of the work, workers' compensation coverage
8228 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides
8229 prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

8230 B. The Department of General Services shall provide the form to the Institution. Failure of the
8231 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
8232 of subsection A.

8233 C. No subcontractor shall perform any work on a construction project of the Institution unless he
8234 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
8235 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

8236 § 26. Retainage on construction contracts. -

8237 A. In any contract issued by the Institution for construction that provides for progress payments in
8238 installments based upon an estimated percentage of completion, the contractor shall be paid at least
8239 ninety-five percent of the earned sum when payment is due, with no more than five percent being

retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -

A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.

§ 28. Bid bonds. -

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1,000,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1,000,000.

§ 29. Performance and payment bonds. -

A. Upon the award by the Institution of any (i) public construction contract exceeding \$1,000,000 awarded to any prime contractor or (ii) public construction contract exceeding \$1,000,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

8301 *E. Nothing in this section shall preclude the Institution from requiring payment or performance*
8302 *bonds for construction contracts below \$1,000,000.*

8303 *F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish*
8304 *a payment bond with surety thereon in the sum of the full amount of the contract with such*
8305 *subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are*
8306 *directly with the subcontractor for performing labor and furnishing materials in the prosecution of the*
8307 *work provided for in the subcontract.*

8308 *§ 30. Alternative forms of security. -*

8309 *A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash*
8310 *escrow in the face amount required for the bond.*

8311 *B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the*
8312 *Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain*
8313 *designated funds in the face amount required for the bid, payment or performance bond. Approval shall*
8314 *be granted only upon a determination that the alternative form of security proffered affords protection*
8315 *to the Institution equivalent to a corporate surety's bond.*

8316 *§ 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or*
8317 *performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for*
8318 *Proposal.*

8319 *§ 32. Action on performance bond. - No action against the surety on a performance bond shall be*
8320 *brought by the Institution unless brought within one year after (i) completion of the contract, including*
8321 *the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty*
8322 *that gave rise to the action.*

8323 *§ 33. Actions on payment bonds; waiver of right to sue. -*

8324 *A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished*
8325 *material in accordance with the contract documents in furtherance of the work provided in any contract*
8326 *for which a payment bond has been given, and who has not been paid in full before the expiration of 90*
8327 *days after the day on which the claimant performed the last of the labor or furnished the last of the*
8328 *materials for which he claims payment, may bring an action on the payment bond to recover any*
8329 *amount due him for the labor or material. The obligee named in the bond need not be named a party*
8330 *to the action.*

8331 *B. Any claimant who has a direct contractual relationship with any subcontractor but who has no*
8332 *contractual relationship, express or implied, with the contractor, may bring an action on the*
8333 *contractor's payment bond only if he has given written notice to the contractor within 180 days from the*
8334 *day on which the claimant performed the last of the labor or furnished the last of the materials for*
8335 *which he claims payment, stating with substantial accuracy the amount claimed and the name of the*
8336 *person for whom the work was performed or to whom the material was furnished. Notice to the*
8337 *contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to*
8338 *such contractor at any place where his office is regularly maintained for the transaction of business.*
8339 *Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not*
8340 *be subject to the time limitations stated in this subsection.*

8341 *C. Any action on a payment bond shall be brought within one year after the day on which the*
8342 *person bringing such action last performed labor or last furnished or supplied materials.*

8343 *D. Any waiver of the right to sue on the payment bond required by this section shall be void unless*
8344 *it is in writing, signed by the person whose right is waived, and executed after such person has*
8345 *performed labor or furnished material in accordance with the contract documents.*

8346 *§ 34. Public inspection of certain records. -*

8347 *A. Except as provided in this section, all proceedings, records, contracts and other public records*
8348 *relating to procurement transactions shall be open to the inspection of any citizen, or any interested*
8349 *person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et*
8350 *seq.).*

8351 *B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution*
8352 *shall not be open to public inspection.*

8353 *C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect*
8354 *bid records within a reasonable time after the opening of all bids but prior to award, except in the*
8355 *event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,*
8356 *bid records shall be open to public inspection only after award of the contract.*

8357 *D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect*
8358 *proposal records within a reasonable time after the evaluation and negotiations of proposals are*
8359 *completed but prior to award, except in the event that the Institution decides not to accept any of the*
8360 *proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection*
8361 *only after award of the contract.*

8362 *E. Any inspection of procurement transaction records under this section shall be subject to*

8363 reasonable restrictions to ensure the security and integrity of the records.

8364 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in
8365 connection with a procurement transaction or prequalification application submitted pursuant to
8366 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et
8367 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to
8368 or upon submission of the data or other materials, (ii) identify the data or other materials to be
8369 protected, and (iii) state the reasons why protection is necessary.

8370 § 35. Exemption for certain transactions. -

8371 A. The provisions of these Rules shall not apply to:

8372 1. The selection of services related to the management and investment of the Institution's endowment
8373 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be
8374 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by
8375 § 23-76.1.

8376 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the
8377 Institution. However, such purchase procedures shall provide for competition where practicable.

8378 3. Procurement of any construction or planning and design services for construction by the
8379 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is
8380 obligated to conform to procurement procedures that are established by federal statutes or regulations,
8381 whether or not those federal procedures are in conformance with the provisions of these Rules.

8382 4. The University of Virginia Medical Center.

8383 5. The purchase of goods and services by the Institution when such purchases are made under a
8384 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

8385 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
8386 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
8387 regulations not in conformance with the provisions of these Rules, the Institution may comply with such
8388 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination
8389 of the Institution's President or his designee that acceptance of the grant or contract funds under the
8390 applicable conditions is in the public interest. Such determination shall state the specific provision of
8391 these Rules in conflict with the conditions of the grant or contract.

8392 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

8393 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into
8394 contracts with faith-based organizations for the purposes described in this section on the same basis as
8395 any other nongovernmental source without impairing the religious character of such organization, and
8396 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

8397 B. For the purposes of this section, "faith-based organization" means a religious organization that is
8398 or applies to be a contractor to provide goods or services for programs funded by the block grant
8399 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.
8400 104-193.

8401 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this
8402 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's
8403 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based
8404 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of
8405 religious freedom by the recipients of such goods, services, or disbursements.

8406 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and
8407 purchase orders prominently display a nondiscrimination statement indicating that it does not
8408 discriminate against faith-based organizations.

8409 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any
8410 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on
8411 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on
8412 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as
8413 other organizations that contract with public bodies to account for the use of the funds provided;
8414 however, if the faith-based organization segregates public funds into separate accounts, only the
8415 accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in
8416 clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

8417 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,
8418 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent
8419 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to
8420 expenditures pursuant to contracts, if any, for the services of chaplains.

8421 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization
8422 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based
8423 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of

8424 a particular religion.

8425 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant
8426 to a contract between the Institution and a faith-based organization, objects to the religious character of
8427 the faith-based organization from which the individual receives or would receive the goods, services, or
8428 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date
8429 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

8430 The Institution shall provide to each individual who applies for or receives goods, services, or
8431 disbursements provided pursuant to a contract between the Institution and a faith-based organization a
8432 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based
8433 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's
8434 charitable or religious character, practices, or expression. No provider of services may discriminate
8435 against you on the basis of religion, a religious belief, or your refusal to actively participate in a
8436 religious practice. If you object to a particular provider because of its religious character, you may
8437 request assignment to a different provider. If you believe that your rights have been violated, please
8438 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

8439 § 37. Exemptions from competition for certain transactions. - The Institution may enter into
8440 contracts without competition, as that term is described in subsections A through J of § 5 (Methods of
8441 procurement) of these Rules, for:

8442 1. The purchase of goods or services that are produced or performed by or related to:

8443 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the
8444 Blind and Vision Impaired;

8445 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or
8446 supported employment services serving the handicapped;

8447 c. Private educational institutions; or

8448 d. Other public educational institutions.

8449 2. Speakers and performing artists;

8450 3. Memberships and Association dues;

8451 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of
8452 goods or services by the Institution;

8453 5. Group travel in foreign countries;

8454 6. Conference facilities and services;

8455 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,
8456 registration and tournament fees;

8457 8. Royalties; or

8458 9. The purchase of legal services, provided that the Office of the Attorney General has been
8459 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

8460 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
8461 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility
8462 service without competitive sealed bidding or competitive negotiation if purchased through an
8463 association of which the Institution is a member if the association was formed and is maintained for the
8464 purpose of promoting the interest and welfare of and developing close relationships with similar public
8465 bodies, provided such association has procured the insurance or electric utility services by use of
8466 competitive principles and provided that the Institution has made a determination in advance after
8467 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive
8468 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this
8469 determination.

8470 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning:

8471 "Contractor" means the entity that has a direct contract with the Institution.

8472 "Debtor" means any individual, business, or group having a delinquent debt or account with any
8473 state agency that obligation has not been satisfied or set aside by court order or discharged in
8474 bankruptcy.

8475 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
8476 provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days
8477 after receipt of a proper invoice by the Institution or its agent or (b) thirty days after receipt of the
8478 goods or services by the Institution..

8479 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor
8480 to whom the contract was awarded or to any subcontractor in the performance of the work provided for
8481 in such contract.

8482 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment
8483 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

8484 § 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the
8485 provisions of § 26 relating to retainage shall remain valid.

§ 42. Prompt payment of bills by the Institution. -

A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.

Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

§ 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services.

§ 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

§ 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract; or

b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions. -

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or

8547 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the
8548 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the
8549 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is
8550 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue
8551 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven
8552 days following the payment date.

8553 § 47. Ineligibility. -

8554 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from
8555 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the
8556 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the
8557 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,
8558 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so
8559 requested by the bidder within five business days after receipt of the notice.

8560 Within ten business days after receipt of the notice, the bidder may submit rebuttal information
8561 challenging the evaluation. The Institution shall issue its written determination of disqualification or
8562 ineligibility based on all information in the possession of the Institution, including any rebuttal
8563 information, within five business days of the date the Institution received such rebuttal information.

8564 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to
8565 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the
8566 evaluation reveals that the bidder should be refused permission to participate, or disqualified from
8567 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The
8568 notice shall state the basis for the determination, which shall be final unless the bidder appeals the
8569 decision within ten days after receipt of the notice by invoking administrative procedures meeting the
8570 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided
8571 in § 54.

8572 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in
8573 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be
8574 restoration of eligibility.

8575 § 48. Appeal of denial of withdrawal of bid. -

8576 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final
8577 and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by
8578 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by
8579 instituting legal action as provided in § 54.

8580 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,
8581 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the
8582 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released
8583 only upon a final determination that the bidder was entitled to withdraw the bid.

8584 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an
8585 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the
8586 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation
8587 to Bid, the sole relief shall be withdrawal of the bid.

8588 § 49. Determination of nonresponsibility. -

8589 A. Following public opening and announcement of bids received on an Invitation to Bid, the
8590 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed
8591 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent
8592 low bidder is responsible. If the Institution so determines, then it may proceed with an award in
8593 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution
8594 determines that the apparent low bidder is not responsible, it shall proceed as follows:

8595 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify
8596 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for
8597 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that
8598 relate to the determination, if so requested by the bidder within five business days after receipt of the
8599 notice.

8600 2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information
8601 challenging the evaluation. The Institution shall issue its written determination of responsibility based
8602 on all information in the possession of the Institution, including any rebuttal information, within five
8603 business days of the date the Institution received the rebuttal information. At the same time, the
8604 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

8605 3. Such notice shall state the basis for the determination, which shall be final unless the bidder
8606 appeals the decision within ten days after receipt of the notice by invoking administrative procedures
8607 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action
8608 as provided in § 54.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award. -

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution ("ADR") shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest. - An award need not be delayed for the period allowed a bidder

8670 or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing
8671 of a timely legal action as provided in § 54, no further action to award the contract shall be taken
8672 unless there is a written determination that proceeding without delay is necessary to protect the public
8673 interest or unless the bid or offer would expire.

8674 § 53. Contractual disputes. -

8675 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than
8676 sixty days after final payment. However, written notice of the contractor's intention to file a claim shall
8677 be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing
8678 herein shall preclude a contract from requiring submission of an invoice for final payment within a
8679 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of
8680 claims shall not delay payment of amounts agreed due in the final payment.

8681 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.
8682 Such procedure, which may be contained in the contract or may be specifically incorporated into the
8683 contract by reference and made available to the contractor, shall establish a time limit for a final
8684 decision in writing by the Institution. If the Institution has established administrative procedures
8685 meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or
8686 specifically incorporated in the contract by reference and made available to the contractor. The
8687 Institution may require the submission of contractual claims pursuant to any contract to Alternative
8688 Dispute Resolution ("ADR") as an administrative procedure.

8689 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
8690 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
8691 decision on the claim, unless the Institution fails to render such decision within the time specified in the
8692 contract.

8693 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
8694 six months of the date of the final decision on the claim by the Institution by invoking administrative
8695 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
8696 legal action as provided in § 54.

8697 § 54. Legal actions. -

8698 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from
8699 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder
8700 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging
8701 that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an
8702 honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the
8703 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation
8704 to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of
8705 prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder,
8706 having been previously determined by the Institution to be not responsible in accordance with § 4, is
8707 found by the court to be a responsible bidder, the court may direct the Institution to award the contract
8708 to such bidder in accordance with the requirements of this section and the Invitation to Bid.

8709 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
8710 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
8711 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
8712 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
8713 or the terms or conditions of the Invitation to Bid.

8714 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a
8715 sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award
8716 or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
8717 court challenging a proposed award or the award of a contract, which shall be reversed only if the
8718 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,
8719 but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable
8720 state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

8721 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
8722 of reasonable security to protect the Institution.

8723 E. A contractor may bring an action involving a contract dispute with the Institution in the
8724 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
8725 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
8726 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
8727 Accounts.

8728 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards
8729 of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or
8730 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same
8731 procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure. -

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution ("ADR") procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

§ 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting. - The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

ATTACHMENT 2

Memorandum of Agreement

The Commonwealth of Virginia and the University of Virginia

ERP/SciQuest Implementation with eVA

The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the following:

I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Oracle).

II. Initially, all non-exempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.

III. The University may request that eVA contract vendors provide a version of their contract catalog for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA transaction fees for non-exempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA.

IV. eVA will load all non-exempt University orders into the eVA Data Warehouse. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA.

V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense. The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.

VI. eVA will deliver University non-exempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the

8793 *eVA Business Plan as follows:*

8794 *A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the*
8795 *appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that*
8796 *includes the statement "Vendor refuses eVA terms and conditions". The University agrees that it will*
8797 *pay the eVA transaction fees for these orders.*

8798 *For vendors that agree to accept the eVA terms and conditions, the University will transmit the*
8799 *appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that*
8800 *includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager,*
8801 *e-mail address and phone number." The University agrees that, for these orders, it will resolve any*
8802 *vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether*
8803 *such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or*
8804 *CGI-AMS.*

8805 *The University further agrees that:*

8806 *It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution*
8807 *agreed to by the University and the vendor within 10 business days, unless otherwise agreed on a*
8808 *case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*

8809 *It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within*
8810 *the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*

8811 *3. In the event the University does not provide resolution notification to the eVA Business Manager*
8812 *(or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment*
8813 *reversing disputed transaction fees from the vendor to the University and the University will pay the fee.*

8814 *VII. The University will not require separate vendor registrations as a prerequisite for responding to*
8815 *University solicitations. The University will participate in an enterprise workgroup to determine the best*
8816 *means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9*
8817 *information will be supported in eVA in such a way as to provide CoVA verified vendor information to*
8818 *entities. The University will have the option to receive a subset of vendor related data. Until an*
8819 *enterprise W-9 process is established, the University will be responsible for collection of W-9*
8820 *information.*

8821 *VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at*
8822 *least six (6) months prior to change or as soon as any new plan is proposed) with the University*
8823 *regarding any proposed replacement to the CoVA's electronic procurement system and on changes that*
8824 *may affect the technical changes described herein.*

8825 *IX. Integration of the University's electronic procurement solution with the University's ERP is the*
8826 *responsibility of the University. The solution must provide for orders, change orders and cancellations.*

8827 *Guidelines*

8828 *1. The establishment of this agreement is intended to formulate the basis for a long-term solution for*
8829 *electronic procurement between the University and the CoVA.*

8830 *2. Orders may be batched and transmitted to eVA as often as needed except between the hours of*
8831 *8PM and 4AM. eVA will transmit registered vendor orders it receives within fifteen minutes or less.*

8832 *3. Non-exempt orders to un-registered vendors are to be transmitted to eVA for loading to the Data*
8833 *Warehouse. The University shall be responsible for payment of all eVA transaction fees for non-exempt*
8834 *orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and*
8835 *registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements*
8836 *for unregistered vendor orders.*

8837 *4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA*
8838 *standard format.*

8839 *5. Cancellations are to be transmitted to eVA complying with the eVA standard format.*

8840 *6. eVA Interface standard does not currently support PCard orders; however these orders may be*
8841 *processed via the interface as (a) confirming orders or (b) orders for pcards on file with the vendor.*

8842 *Schedule*

8843 *The University shall implement this agreement no later than December 2006.*

8844 *Metrics*

8845 *A. The University shall comply with the following Governor's eVA Management*

8846 *Objective*

8847 *95% of all non-exempt orders to be processed by eVA. Includes non-exempt orders issued by end*
8848 *users (PCard & LPO) and the central purchasing office. Non-exempt orders to unregistered vendors*
8849 *received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood*
8850 *that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory*
8851 *processing through eVA. All non-exempt orders not processed by eVA shall be reported on the eVA*
8852 *Dashboard and the corresponding non-use fee paid by the University.*

8853 *B. The University shall meet the following management objectives for electronic procurement:*

8854 *1. Provide end users, including purchase-card users, access to an electronic system for buying;*

2. Conduct business with eVA registered vendors whenever possible;
3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;
4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;
5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible.
- The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes related to payment of eVA transaction fees, by working directly with the vendor whether such vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or CGI-AMS.
- The University further agrees that:
- It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);
 - It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
 - In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
6. Timely process electronic change orders and cancellations;
7. Post all solicitations and business opportunities greater than \$50,000 on the eVA web site except as specifically exempted by DPS;
8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will be responsible for the accuracy of contract catalog pricing loaded into the ERP/SciQuest.
9. Use eVA electronic vendor notification for procurement opportunities (per plans to post solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 below);
10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate commodities, when such are identified.
11. Complete and certify the monthly eVA Dashboard Report, and
12. Timely remit any eVA transaction and non-use fees incurred by the institution.
- C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
- The University shall assure that payments to CGI-AMS are current.

EXHIBIT Q

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING HUMAN RESOURCES FOR PARTICIPATING COVERED EMPLOYEES AND OTHER UNIVERSITY EMPLOYEE

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING HUMAN RESOURCES FOR PARTICIPATING COVERED EMPLOYEES AND OTHER UNIVERSITY EMPLOYEES

I. PREAMBLE.

HOUSE SUBSTITUTE

HB1502H1

8916 Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389,
8917 respectively) grant the University of Virginia authority regarding the adoption of an alternative human
8918 resources system and alternative retirement, health care and other insurance plans for University of
8919 Virginia Medical Center employees. Further, the Restructured Higher Education Financial and
8920 Administrative Operations Act (the "Act"), Chapter 4.10 of Title 23 of the Code of Virginia, establishes
8921 a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and
8922 provides that upon becoming a Covered Institution, the University shall have responsibility and
8923 accountability for human resources management for all University employees, defined in the Act as
8924 "Covered Employees," who pursuant to subsection A of § 23-38.114 of the Act "are state employees of"
8925 the University. Specifically, the Act provides that, as of the Effective Date of its initial Management
8926 Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the
8927 Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall
8928 be subject to the policies and procedures prescribed by the Virginia Department of Human Resource
8929 Management, provided that they may subsequently elect to become Participating Covered Employees.
8930 All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29
8931 (§ 2.2-2900 et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees
8932 subject to the Virginia Personnel Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were
8933 subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation
8934 plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to
8935 procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions,
8936 continue to participate in either state- or University-sponsored benefit plans as described by the
8937 Management Agreement.

8938 The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law
8939 and constitute the human resources policies to be included in any human resources system adopted by
8940 the University for its employees.

8941 This Policy is intended to cover the authority that may be granted to the University pursuant to
8942 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
8943 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
8944 and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers
8945 and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed
8946 those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy
8947 Statement.

8948 II. DEFINITIONS.

8949 As used in this policy, the following terms shall have the following meanings, unless the context
8950 requires otherwise:

8951 "Academic Division" means that part of the University known as State Agency 207.

8952 "Academic Division Human Resources System" means the human resources system for Academic
8953 Division employees as provided for herein.

8954 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
8955 Chapter 4.10 of Title 23 of the Code of Virginia.

8956 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

8957 "Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29
8958 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by
8959 the Virginia Department of Human Resource Management and who are not Participating Covered
8960 Employees.

8961 "College" means that part of the University operated as the University of Virginia's College at Wise
8962 (State Agency 246).

8963 "College Human Resources System" means the human resources system for College employees as
8964 provided for herein.

8965 "Covered Employee" means any person who is employed by the University on either a salaried or
8966 non-salaried (wage) basis.

8967 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement
8968 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that
8969 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of
8970 Subchapter 3 of the Act.

8971 "Employee" means Covered Employee unless the context clearly indicates otherwise.

8972 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
8973 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
8974 missions of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the
8975 case of the University of Virginia Medical Center.

8976 "Effective Date" means the effective date of the initial Management Agreement between the
8977 University and the Commonwealth.

8978 "Existing Medical Center Policy Statement" means the Policy Statement Governing the Exercise of
8979 Medical Center Personnel Autonomy adopted by the Board of Visitors in 1996.

8980 "Governing Law" means the Act and the University's Enabling Legislation.

8981 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
8982 between the University and the Commonwealth.

8983 "Medical Center" means that part of the University consisting of the University of Virginia Medical
8984 Center (State Agency 209), and related health care and health maintenance facilities.

8985 "Medical Center Human Resources System" means the human resources system for Medical Center
8986 employees as provided for herein.

8987 "Participating Covered Employee" means (i) all salaried nonfaculty University employees who were
8988 employed as of the day prior to the Effective Date of the University's initial Management Agreement
8989 with the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be
8990 governed by such human resources program or programs, plans, policies, and procedures established by
8991 [the Participating Institution], (ii) all salaried nonfaculty University employees who are employed by the
8992 University on or after the Effective Date of the initial Management Agreement between the University
8993 and the Commonwealth, (iii) all non-salaried nonfaculty University employees without regard to when
8994 they were hired, (iv) all faculty University employees without regard to when they were hired, and (v)
8995 all employees of the University of Virginia Medical Center without regard to when they were hired.

8996 "Systems" mean collectively the Academic Division Human Resources System, the College Human
8997 Resources System, and the Medical Center Human Resources System that are in effect from time to time.

8998 "University" means the University of Virginia, consisting of the Academic Division, the College, and
8999 the Medical Center.

9000 "University employee" means a Covered Employee.

9001 III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

9002 The University has had human resources system autonomy through decentralization and codified
9003 autonomy for its employees for some time. For example, general faculty at the University are expressly
9004 exempt from the Virginia Personnel Act. The Academic Division and the College have had
9005 decentralization in most human resources functions and activities since the late 1980s and early 1990s,
9006 including, but not limited to, the running of payrolls; the administration of hiring, classification, and
9007 promotion practices; the administration of separate health insurance and retirement plans. Effective
9008 July 1, 1996, all Medical Center employees were exempted from the Virginia Personnel Act and the
9009 policies and procedures of the Virginia Department of Human Resource Management (formerly the
9010 Department of Personnel and Training). The Board of Visitors approved the Existing Medical Center
9011 Policy Statement in 1996. A separate human resources system is in place for all Medical Center
9012 employees, which the Board of Visitors hereby continues, recognizing that the human resources needs of
9013 the Medical Center differ in certain respects from those of the Academic Division and the College.

9014 The Act extends and reinforces the human resources autonomy previously granted to the University.
9015 This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and
9016 have in place by or after the Effective Date of its initial Management Agreement with the
9017 Commonwealth, a human resources system or systems for all University employees in the Academic
9018 Division and the College, and to continue the existing human resources system for Medical Center
9019 employees. On that Effective Date, and until changed by the University or unless otherwise specified in
9020 this Policy, the systems for University employees shall be the same systems applicable to those
9021 employees in effect immediately prior to that Effective Date.

9022 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

9023 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
9024 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
9025 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
9026 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
9027 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
9028 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
9029 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
9030 and procedures.

9031 V. UNIVERSITY OF VIRGINIA HUMAN RESOURCES SYSTEMS.

9032 A. Adoption and Implementation of Academic Division and College Human Resources Systems for
9033 the Academic Division and the College; Continuation of Medical Center Human Resources System for
9034 the Medical Center.

9035 The President, acting through the Executive Vice President and Chief Operating Officer, in
9036 consultation with the Vice President and Provost, is hereby authorized to adopt and implement human
9037 resources systems for employees of the Academic Division and for employees of the College that
9038 implement and are consistent with the Governing Law, other applicable provisions of law, these

9039 University human resources policies for Academic Division and College employees, and any other
9040 human resources policies adopted by the Department of Human Resource Management or the Board of
9041 Visitors for University personnel, unless Academic Division employees or College employees are
9042 exempted from those other human resources policies by law or policy. The University Academic
9043 Division and College Human Resources Systems shall include a delegation of personnel authority to
9044 appropriate University officials responsible for overseeing and implementing the Academic Division and
9045 College Human Resources Systems, including a grant of authority to such officials to engage in further
9046 delegation of authority as the President or his designee deems appropriate.

9047 The University and the College commit to regularly engage employees in appropriate discussions and
9048 to receive employee input as the new Academic Division and College Human Resources Systems are
9049 developed. The University and the College will regularly communicate the details of new proposals to
9050 all employees who are eligible to participate in the new Academic Division Human Resources System or
9051 the College Human Resources System through written communication, open meetings, and website
9052 postings as appropriate, so that employees will have full information that will help them evaluate the
9053 merits of the new human resource system compared to the then-current State human resource system.

9054 Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and
9055 until amended as described below, the University's human resources systems shall consist of the
9056 following:

9057 1. the current human resources system for "Academic Division General Faculty" as posted on the
9058 Vice President and Provost's web site, <http://www.virginia.edu/provost/index.html>, and periodically
9059 amended;

9060 2. the current human resources system for "College General Faculty" as included in the University of
9061 Virginia's College at Wise Faculty Handbook 2004-05, as periodically amended;

9062 3. the current human resources system for Classified Employees in the Academic Division and the
9063 College as posted on the Virginia Department of Human Resource Management website at
9064 <http://www.dhrm.state.va.us/hrpolicy/policy.html>, and the University's web site at
9065 <http://www.hrs.virginia.edu/policies.html>, as periodically amended;

9066 4. the human resources system for Participating Covered Employees, which shall include
9067 non-salaried (wage) employees, as posted on the University Human Resources web site,
9068 www.hrs.virginia.edu, and periodically amended; and

9069 5. the current human resources system for Medical Center employees, which shall continue, including
9070 the policies and procedures set forth in the University of Virginia Medical Center Human Resources
9071 Policies and Procedures Manual, as such Manual may be amended from time to time. The Medical
9072 Center Human Resources System is and shall continue to be consistent with Governing Law, other
9073 provisions of applicable law, and any other human resources policies adopted by the Board of Visitors
9074 for Medical Center employees. All current delegations of authority to University and Medical Center
9075 officials who oversee the Medical Center Human Resources System are hereby ratified and continue.

9076 All the systems described above, except the system described in paragraph 3, may be amended by the
9077 President, acting through the Executive Vice President and Chief Operating Officer, consistent with
9078 these human resources policies. The system described in paragraph 3 may be amended only by the
9079 State.

9080 B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human
9081 Resources Policies.

9082 The President, acting through the Executive Vice President and Chief Operating Officer, shall take
9083 all necessary and reasonable steps to assure (i) that the University officials who develop, implement and
9084 administer the Academic Division and College Human Resources Systems and the Medical Center
9085 Human Resources System authorized by Governing Law and these human resources policies are
9086 knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law,
9087 these University human resources policies, and other applicable Board of Visitors' human resources
9088 policies affecting University employees, and (ii) that compliance with such laws and human resources
9089 policies is achieved.

9090 VI. HUMAN RESOURCES POLICIES.

9091 The Academic Division and College Human Resources Systems adopted by the University pursuant to
9092 Governing Law and this Policy, as set forth in Section V above, as well as the Medical Center Human
9093 Resources System, shall embody the following human resources policies and principles:

9094 A. Election by Academic Division and College Salaried Nonfaculty Employees. Upon the
9095 adoption by the University of an Academic Division Human Resources System, or a College Human
9096 Resources System, or both, all salaried nonfaculty University employees who were in the employment of
9097 the Academic Division or the College, as appropriate, as of the day prior to the Effective Date of its
9098 initial Management Agreement with the Commonwealth, except employees of the Medical Center, shall
9099 be given written notice of their right to elect to participate in and be governed by either (i) the State
9100 human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of

Title 2.2 of the Code of Virginia and administered by the Department of Human Resource Management, or (ii) the Academic Division Human Resources System or the College Human Resources System, as appropriate. A salaried nonfaculty University employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty University employee who elects in writing to participate in and be governed by the Academic Division Human Resources System or the College Human Resources System, as appropriate, also, by that election, shall be deemed to have elected to be eligible to participate in and to be governed by the human resources, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the University as part of that Academic Division Human Resources System or College Human Resources System, as appropriate.

Each such salaried nonfaculty University employee shall be given at least 90 days to make the election required by the prior paragraph. Such 90-day period shall begin to run on the date on which the Academic Division Human Resources System or the College Human Resources System, as appropriate, becomes effective for that University employee's classification of employees. If such a salaried nonfaculty University employee does not make an election by the end of that specified election period, that University employee shall be deemed not to have elected to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate. If such a salaried nonfaculty University employee elects to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate, that election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty University employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 22-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 an opportunity to elect to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate; provided that, each time prior to offering such opportunity to such salaried nonfaculty University employees, and at least once every two years after the effective date of the Academic Division Human Resources System or the College Human Resources System, or both, as appropriate, the University shall make available to each of its salaried nonfaculty University employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.

B. Classification and Compensation.

General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of University financial resources. The plans adopted by the University for its faculty, Medical Center employees, and other Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its classification and compensation plans to all University employees. The plans applicable to Participating Covered Employees and Medical Center employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the availability of necessary financial resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the University's compensation plans.

Classification Plan. The Systems shall include one or more classification plans for University employees that classify positions according to job responsibilities and qualifications. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the University, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.

Compensation Plan. The Systems shall include one or more compensation plans for each University employee classification or group. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the Academic Division and College shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the University, the compensation plan or plans for all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. On that Effective Date, and until changed by the University, the compensation plan for Medical Center employees in effect immediately prior to that Effective Date shall continue as the compensation plan for

9162 *Medical Center employees. Any major change in compensation plans for Participating Covered*
9163 *Employees or Medical Center employees shall be reviewed and approved by the Board of Visitors before*
9164 *that change becomes effective. Any change recommended in the compensation plans may take into*
9165 *account the prevailing rates in the labor market for the jobs in question, or for similar positions, the*
9166 *relative value of jobs, the competency and skills of the individual employee, internal equity, and the*
9167 *availability of necessary financial resources to fund the proposed change. The compensation payable to*
9168 *University employees shall be authorized and approved only by designated University officers delegated*
9169 *such authority by the University, and shall be consistent with the approved compensation plan for the*
9170 *relevant position or classification. Further approval by any other State Agency, governmental body or*
9171 *officer is not required for setting, adjusting or approving the compensation payable to individual*
9172 *Participating Covered Employees.*

9173 *Wages. The Systems shall include policies and procedures for the authorization, computation and*
9174 *payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and*
9175 *call back, and for the payment of hourly employees.*

9176 *Payment of Compensation. The Systems shall include policies and procedures for paying*
9177 *compensation to employees, including the establishment of one or more payday schedules.*

9178 *Work Schedule and Workweek. The Systems shall include policies and procedures for the*
9179 *establishment of, and modifications to, work schedules and workweeks for all University employees,*
9180 *including alternative work schedules and sites, and telecommuting policies and procedures.*

9181 *Other Classification and Compensation Policies and Procedures. The Systems may include any other*
9182 *reasonable classification and compensation policies and procedures the President, acting through the*
9183 *Executive Vice President and Chief Operating Officer, deems appropriate.*

9184 *C. Benefits.*

9185 *The Systems shall provide fringe benefits to all benefits eligible employees, including retirement*
9186 *benefits, health care insurance, and life, disability, and accidental death and dismemberment insurance.*
9187 *The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may*
9188 *include an optional benefits plan for benefits eligible employees, including additional insurance*
9189 *coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance*
9190 *programs, employee intramural and recreational passes, and other wellness programs. As provided in*
9191 *subsections B and C of § 23-38.119 of the Act, the University may require Participating Covered*
9192 *Employees to pay all or a portion of the cost of group life, disability and accidental death and*
9193 *dismemberment insurance, which may be collected through a payroll deduction program. Participating*
9194 *Covered Employees shall not be required to present evidence of insurability for basic group life*
9195 *insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement*
9196 *System group insurance programs under the terms of and to the extent allowed by subsections B and D*
9197 *of the Act or any other provision of law.*

9198 *Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until*
9199 *that section is amended, the state retirement system, state health insurance program, and state workers'*
9200 *compensation coverage program as they may be amended from time to time, shall continue to apply to*
9201 *and govern all eligible University employees. If, however, the University has been or is permitted by*
9202 *law other than the Act to establish an alternative health insurance plan or an alternative faculty or*
9203 *Medical Center retirement plan or plans, such alternative health insurance or faculty or Medical Center*
9204 *retirement plan or plans shall apply to and govern the University employees included in such plan or*
9205 *plans. The University shall be responsible for managing its non-Medicare eligible retiree health*
9206 *insurance. Subject to the Act, the University may offer an alternative health insurance plan for*
9207 *Medicare-eligible retirees.*

9208 *The Systems may provide different benefits plans for reasonably different groups or classifications of*
9209 *employees, and may provide benefits to part-time employees. On the Effective Date of the University's*
9210 *initial Management Agreement with the Commonwealth, and until changed by the appropriate governing*
9211 *authority, the benefits plans provided by the University to Classified Employees and Participating*
9212 *Covered Employees shall be the benefits plans provided to that group or classification as of the date*
9213 *immediately prior to that Effective Date. On or after that Effective Date, alternative University group*
9214 *life, accidental death and dismemberment, and short- and long-term disability plans may be provided to*
9215 *eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the*
9216 *execution of participation agreements as provided in subsections B and C of § 23-38.119 of the Act,*
9217 *they may be provided by the appropriate State programs, but no contributions to the State programs by*
9218 *the University shall be required for Participating Covered Employees who do not participate in the*
9219 *programs. Subject to the provisions of the Act, any new plans, programs and material changes*
9220 *permitted under current law in University employee benefits plans, other than Classified Employee*
9221 *benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash*
9222 *Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources,*
9223 *and the authority to implement cafeteria-style benefits for University employees other than Classified*

9224 Employees.

9225 Insurance and all proceeds therefrom provided pursuant to § 23-38.119 of the Act shall be exempt
9226 from legal process and may be subject to assignment as provided in subsection A of § 23-38.119.

9227 D. Employee Relations.

9228 General. The Systems shall contain provisions that protect the rights and privileges of University
9229 employees consistent with sound management principles and fair employment practice law.

9230 Employee Safety and Health. The Systems shall contain provisions that promote workplace safety
9231 compliance with applicable law and regulations.

9232 Employee Work Environment. The Systems shall promote a work environment that is conducive to
9233 the performance of job duties, and free from intimidation or coercion in violation of State or federal
9234 law, including sexual harassment or other discrimination.

9235 Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to
9236 policies and procedures for awarding, honoring, or otherwise recognizing University employees,
9237 including but not limited to those who have performed particularly meritorious service for the
9238 University, have been employed by the University for specified periods of time, or have retired from the
9239 University after lengthy service.

9240 Counseling Services. The Systems shall provide counseling services through the State's Employee
9241 Assistance Program or a University Employee Assistance Program to any eligible University employee
9242 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the
9243 circumstances under which the time necessary to participate in such counseling may be granted.

9244 Unemployment Compensation. The Systems shall ensure that University employees receive the full
9245 unemployment compensation benefits to which they are legally entitled, and that the University's liability
9246 is limited to legitimate claims for such benefits.

9247 Workers' Compensation. The Systems shall ensure that University employees have workers'
9248 compensation benefits to which they are legally entitled pursuant to the State Employees' Workers'
9249 Compensation Program administered by the Department of Human Resource Management.

9250 8. Performance Planning and Evaluation. The Systems shall include one or more performance
9251 planning and evaluation processes for University employees that (i) establish and communicate the
9252 University's performance expectations, (ii) help develop productive working relationships, (iii) allow
9253 employees to present their views concerning their performance, (iv) identify areas for training or
9254 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify
9255 how superlative or inadequate performance shall be addressed, and (vii) ensure that all University
9256 employees are provided relevant information on the evaluation process. The Systems may include
9257 separate performance and evaluation processes for reasonably distinguishable groups of University
9258 employees. On the Effective Date of the University's initial Management Agreement with the
9259 Commonwealth, the existing merit-based performance management system for faculty and Medical
9260 Center employees shall continue, until amended by the University. On or after that Effective Date,
9261 Academic Division and College nonfaculty salaried Participating Covered Employees may be subject to
9262 a variable merit-based performance management system.

9263 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all
9264 employees and to ensure safe, efficient University operations and compliance with the law, the Systems
9265 shall establish rules of personal conduct and standards of acceptable work performance for University
9266 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for
9267 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or
9268 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more
9269 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action
9270 to employee conduct occurring only when employees are at work or are otherwise representing the
9271 University in an official or work-related capacity, unless otherwise specifically provided by the policies
9272 of the Systems or other applicable law. The Systems may provide for a probationary period for new
9273 and re-employed University salaried nonfaculty employees, during which period the policies for
9274 corrective discipline shall not be applicable and the employee may not use the grievance procedure set
9275 forth in the next paragraph. The Systems may include separate rules of personal conduct and standards
9276 of acceptable work performance and policies for corrective discipline for reasonably distinguishable
9277 groups of University employees.

9278 10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to
9279 resolve employment-related problems and complaints informally, and shall be permitted to discuss their
9280 concerns freely and without fear of retaliation with immediate supervisors and management. In the
9281 event that such problems cannot be resolved informally, all salaried nonfaculty University employees,
9282 regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in
9283 § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of
9284 the Code of Virginia, to the extent it was applicable to their classification of employees prior to the

9285 *Effective Date of the University's initial Management Agreement with the Commonwealth. On that*
9286 *Effective Date, and until changed by the University, the faculty grievance procedures in effect*
9287 *immediately prior to the Effective Date shall continue.*

9288 *11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the*
9289 *Classified Employee may file a complaint with the Department of Human Resource Management Office*
9290 *of Equal Employment Services, with the appropriate University office, or with the appropriate federal*
9291 *agencies. All Participating Covered Employees and applicants for employment after the Effective Date*
9292 *of the University's initial Management Agreement with the Commonwealth shall file a complaint with the*
9293 *appropriate University office or with the appropriate federal agencies.*

9294 *12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University*
9295 *employees who lose their jobs for reasons other than their job performance or conduct, such as a*
9296 *reduction in force or reorganization at the University. These University layoff policies shall govern such*
9297 *issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)*
9298 *notice to employees affected by a layoff, (iv) placement options within the University or its respective*
9299 *major divisions and within other parts of the University, (v) the preferential employment rights, if any,*
9300 *of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for*
9301 *recalling employees. In accordance with the terms of the Act, University employees who: (i) were*
9302 *employed prior to the Effective Date of the University's initial Management Agreement with the*
9303 *Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition*
9304 *Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated*
9305 *because of a reduction in force shall have the same preferential hiring rights with State agencies and*
9306 *other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of*
9307 *Virginia. Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 on*
9308 *State employees who were hired by a State agency or executive branch institution before the Effective*
9309 *Date of the University's initial Management Agreement with the Commonwealth and who were separated*
9310 *after that date by that State agency or executive branch institution because of a reduction in workforce.*
9311 *If the University has adopted a classification system pursuant to § 23-38.116 of the Act that differs from*
9312 *the classification system administered by the Department of Human Resource Management, the*
9313 *University shall classify the separated employee according to its classification system and shall place*
9314 *the separated employee appropriately. The University may include separate policies for reasonably*
9315 *distinguishable groups of University employees. On or after the Effective Date of the University's initial*
9316 *Management Agreement with the Commonwealth, all employees from other State agencies and executive*
9317 *branch institutions who are placed by the University under the provisions of the State Layoff Policy*
9318 *shall be Participating Covered Employees.*

9319 *13. Severance Benefits. In accordance with the terms of the Act, the University shall adopt*
9320 *severance policies for salaried Participating Covered Employees who are involuntarily separated for*
9321 *reasons unrelated to performance or conduct. The terms and conditions of such policies shall be*
9322 *determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were*
9323 *employed prior to the Effective Date of the University's initial Management Agreement with the*
9324 *Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of*
9325 *Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may*
9326 *negotiate a formula according to which cash severance benefits may be converted to years of age or*
9327 *creditable service for Participating Covered Employees who participate in the Virginia Retirement*
9328 *System. An employee becoming, on such Effective Date, a Covered Employee shall not constitute a*
9329 *severance or reduction in force to which severance or Workforce Transition Act policies apply.*

9330 *14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i)*
9331 *establish and maintain a work environment at the University that is free from the adverse effect of*
9332 *alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with*
9333 *the University of Virginia Alcohol and Other Drugs Policy, (iii) describe the range of authorized*
9334 *disciplinary action, including termination where appropriate, for violations of such policies and*
9335 *procedures, and the process to be followed in taking such disciplinary action, (iv) provide University*
9336 *employees access to assistance and treatment for problems involving alcohol and other drugs, (v)*
9337 *provide for the circumstances under which employees are required to report certain violations of the*
9338 *policies and procedures to their supervisor, and the University is required to report those violations to a*
9339 *federal contracting or granting agency, (vi) describe the circumstances under which personnel records*
9340 *of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and*
9341 *(vii) provide notice to University employees of the scope and content of the University alcohol and other*
9342 *drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal*
9343 *Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment,*
9344 *reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing*
9345 *for University positions that are particularly safety sensitive, such as those requiring a Commercial*
9346 *Driver's License or the provision of patient care.*

15. *Background Checks.* The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/ professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.

16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.

E. Leave and Release Time.

The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the University shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the University may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.

F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.

1. *Equal Employment Opportunity and Nondiscrimination.* The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of University employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law.

In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation.

On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. University Academic Division and College Classified Employees who change jobs within the Academic Division or the College through a competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.

Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the University to separate the employee from the University in accordance with policies governing performance, conduct, or layoff.

G. Information Systems.

The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the

9408 *Department of Human Resources Management.*

9409 *VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA*
 9410 *AND OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.*

9411 *On and after the Effective Date of its initial Management Agreement with the Commonwealth,*
 9412 *University employees shall be subject to the terms and conditions of the Act and the Management*
 9413 *Agreement between the Commonwealth and the University. Classified Employees shall continue to be*
 9414 *subject to the human resources policies and exceptions to those policies adopted or approved by the*
 9415 *Department of Human Resource Management.*

9416 *In addition, all University employees also shall remain subject to any other human resources policies*
 9417 *adopted by the Board of Visitors applicable to University personnel unless University employees or a*
 9418 *subset thereof are specifically exempted from those other human resources policies either by those other*
 9419 *policies or by this Policy.*

9420

9421

ATTACHMENT 3

9422

9423

Memorandum of Understanding

9424

Between the University of Virginia and the

9425

Department of Human Resources Management Regarding

9426

The Reporting of Human Resources Management Data

9427

This Memorandum of Understanding, which may be amended from time to time by the agreement of
 9428 *all parties, is an attachment to the Policy Governing Human Resources for Participating Covered*
 9429 *Employees and Other University Employees pursuant to the Restructured Higher Education Financial*
 9430 *and Administrative Operations Act of 2005, and is hereby entered into between the University of*
 9431 *Virginia and the Department of Human Resource Management (DHRM)..*

9432

This document outlines the provisions for information management pertaining to human resources
 9433 *data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting*
 9434 *requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so*
 9435 *through efficient and cost-effective methods.*

9436

In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be
 9437 *transmitted through an electronic file transfer to update DHRM's warehouse.*

9438

The University will provide a flat file of designated personnel data. For "Classified Employees", the
 9439 *data provided will match DHRM's data values for the designated fields. For salaried "Participating*
 9440 *Covered Employees", the data provided will include the University's data values for the designated*
 9441 *fields. The University will provide a data dictionary to DHRM. The file of designated data will be*
 9442 *specifically described by an addendum to this Memorandum upon the agreement of the University and*
 9443 *DHRM.*

9444

The University will provide a second flat file of salaried personnel actions for "Classified
 9445 *Employees" and salaried "Participating Covered Employees", such as promotions, separations, and*
 9446 *salary adjustments. The file of relevant personnel actions and designated data to be provided for each*
 9447 *action will be specifically described by an addendum to this Memorandum upon the agreement of the*
 9448 *University and DHRM.*

9449

DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses
 9450 *of employment and compensation actions that are part of the AAP, as demonstration of the University's*
 9451 *compliance with relevant federal and state employment laws and regulations.*

9452

The University may key data into the Benefits Enrollment System or provide a batch file, or
 9453 *employees may use Employee Direct (employee self service). For the self-administered health plans*
 9454 *provided by the University of Virginia Academic Division (agency 207) and Medical Center (agency*
 9455 *209), this section is not relevant.*

9456

Other reports to be provided by the University include the following:

9457

Monthly Employee Position Report

9458

Annual report on salaried, wage, and contract employees

9459

The undersigned hereby agree to the provisions contained in the MOU.

9460

APPROVALS:

9461

The University of Virginia:

9462

By:Date.....

9463

Executive Vice President and Chief Operating Officer

9466

Department of Human Resources Management:

9467

By:Date.....

9468

9469

Director, Department of Human Resources Management

EXHIBIT R

MANAGEMENT AGREEMENT
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
THE UNIVERSITY OF VIRGINIA
PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005

POLICY GOVERNING
FINANCIAL OPERATIONS AND MANAGEMENT

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as State Agency 207.

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as State Agency 246.

"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.

"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University and the Commonwealth of Virginia.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center, known as State Agency 209, and related health care and health maintenance facilities.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means the University of Virginia, consisting of the Academic Division, the College, and

9531 *the Medical Center.*

9532 **III. SCOPE OF POLICY.**

9533 *This Policy applies to the University's responsibility for management, investment and stewardship of*
9534 *all its financial resources, including but not limited to, general, non-general and private funds. This*
9535 *responsibility includes maintaining an independent uniform system of accounting, financial reporting,*
9536 *and internal controls adequate to protect and account for the University's financial resources.*

9537 *The University of Virginia's College at Wise shall receive the benefits of this Policy as it is*
9538 *implemented by the University on behalf of the College at Wise, but the College at Wise shall not*
9539 *receive any additional independent financial operations and management authority as a result of this*
9540 *Management Agreement beyond the independent financial operations and management authority that it*
9541 *had prior to the Effective Date of the University's initial Management Agreement with the*
9542 *Commonwealth or that it may be granted by law in the future.*

9543 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

9544 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*
9545 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*
9546 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*
9547 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*
9548 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*
9549 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*
9550 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*
9551 *and procedures.*

9552 **V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.**

9553 *The President, acting through the Executive Vice President and Chief Operating Officer, shall*
9554 *continue to be authorized by the Board to maintain existing and implement new policies governing the*
9555 *management of University financial resources. These policies shall continue to (i) ensure compliance*
9556 *with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting*
9557 *principles employed by the Commonwealth, including the use of fund accounting principles, with regard*
9558 *to the establishment of the underlying accounting records of the University and the allocation and*
9559 *utilization of resources within the accounting system, including the relevant guidance provided by the*
9560 *State Council of Higher Education for Virginia chart of accounts with regard to the allocation and*
9561 *proper use of funds from specific types of fund sources, (iii) provide adequate risk management and*
9562 *internal controls to protect and safeguard all financial resources, including moneys transferred to the*
9563 *University pursuant to a general fund appropriation, and ensure compliance with the requirements of*
9564 *the Appropriation Act.*

9565 *The financial management system shall continue to include a financial reporting system to satisfy*
9566 *both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,*
9567 *as specified in the related State Comptroller's Directives, and the University's separately audited*
9568 *financial statements. To ensure observance of limitations and restrictions placed on the use of the*
9569 *resources available to the University, the accounting and bookkeeping system of the University shall*
9570 *continue to be maintained in accordance with the principles prescribed for governmental organizations*
9571 *by the Governmental Accounting Standards Board.*

9572 *In addition, the financial management system shall continue to provide financial reporting for the*
9573 *President, acting through the Executive Vice President and Chief Operating Officer, and the Board of*
9574 *Visitors to enable them to provide adequate oversight of the financial operations of the University.*
9575 *Upon the Effective Date of the initial Management Agreement between the University and the*
9576 *Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in*
9577 *Section VII below, the University shall not be required to record its financial transactions in the*
9578 *Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing*
9579 *with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems*
9580 *that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The*
9581 *University's financial reporting system shall provide (i) summary monthly reports for State agencies*
9582 *including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the*
9583 *Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the*
9584 *Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the*
9585 *Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a*
9586 *sufficient level of detail, on such schedule, and using such format that is compatible with the*
9587 *Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such*
9588 *other special reports as may be requested from time to time.*

9589 **VI. FINANCIAL MANAGEMENT POLICIES.**

9590 *The President, acting through the Executive Vice President and Chief Operating Officer, shall create*
9591 *and implement any and all financial management policies necessary to establish a financial management*
9592 *system with adequate risk management and internal control processes and procedures for the effective*

protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia ("SCHEV") annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General ("E&G") fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:

i) The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit;

ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below;

iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

iv) If in any given year the University does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.

v) Beginning on the effective date of its initial Management Agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required

9654 certification from SCHEV, the University shall continue to deposit tuition and all other non-general
9655 funds with the State Treasurer by the same process that it would have been required to use if it had not
9656 entered into a Management Agreement with the Commonwealth.

9657 vi) On the first business day of the first fiscal year following the fiscal year for which it has
9658 received the required certification from SCHEV, the University may draw down all cash balances held
9659 by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
9660 programs, auxiliary enterprises, and all other non-general fund revenues.

9661 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
9662 these funds to the University as specified in Section IX below.

9663 The University also shall have sum sufficient appropriation authority for all non-general funds as
9664 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
9665 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
9666 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
9667 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
9668 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
9669 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to
9670 the Department of Planning and Budget by July 31 of the subsequent fiscal year.

9671 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
9672 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
9673 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
9674 intent of the Commonwealth and the University that the University shall be exempt from the revenue
9675 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
9676 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
9677 University that the University shall be entitled to retain non-general fund savings generated from
9678 changes in Commonwealth rates and charges, including but not limited to health, life, and disability
9679 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
9680 reverting such savings back to the Commonwealth. This financial resource policy assists the University
9681 by providing the framework for retaining and managing non-general funds, for the receipt of general
9682 funds, and for the use and stewardship of all these funds.

9683 The President, acting through the Executive Vice President and Chief Operating Officer, shall
9684 continue to provide oversight of the University's cash management system which is the framework for
9685 the retention of non-general funds. The Internal Audit Department of the University shall periodically
9686 audit the University's cash management system in accordance with appropriate risk assessment models
9687 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight
9688 shall continue to be provided through the annual audit and assessment of internal controls performed by
9689 the Auditor of Public Accounts.

9690 For the receipt of general and non-general funds, the University shall conform to the Security for
9691 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently
9692 exists and from time to time may be amended.

9693 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

9694 The President, through the Executive Vice President and Chief Operating Officer, shall continue to
9695 be authorized to create and implement any and all Accounts Receivable Management and Collection
9696 policies as part of a system for the management of University financial resources. The policies shall be
9697 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the
9698 Code of Virginia such that the University shall take all appropriate and cost effective actions to
9699 aggressively collect accounts receivable in a timely manner.

9700 These shall include, but not be limited to, establishing the criteria for granting credit to University
9701 customers; establishing the nature and timing of collection procedures within the above general
9702 principles; and the independent authority to select and contract with collection agencies and, after
9703 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all
9704 collection activities for all University accounts receivable such as reporting delinquent accounts to
9705 credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In
9706 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's
9707 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and
9708 the State Comptroller to implement such Programs, and shall provide a quarterly summary report of
9709 receivables to the Department of Accounts in accordance with the reporting procedures established
9710 pursuant to the Virginia Debt Collection Act.

9711 IX. DISBURSEMENT MANAGEMENT.

9712 The President, acting through the Executive Vice President and Chief Operating Officer, shall
9713 continue to be authorized to create and implement any and all disbursement policies as part of a system
9714 for the management of University financial resources. The disbursement management policies shall
9715 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in

the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in accordance with the following schedule:

i) the University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50 percent of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;

ii) the University may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and

iii) the University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.

X. DEBT MANAGEMENT.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.

Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.

9777 *The University recognizes that there are numerous types of financing structures and funding sources*
9778 *available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by*
9779 *the President, acting through the Executive Vice President and Chief Operating Officer, within the*
9780 *context of the overall portfolio to ensure that any financial product or structure is consistent with the*
9781 *University's objectives. Regardless of the financing structure(s) utilized, the President, acting through*
9782 *the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain*
9783 *a full understanding of the transaction, including (i) the identification of potential risks and benefits,*
9784 *and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or*
9785 *financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be*
9786 *authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.*

9787 *The University currently has established guidelines relating to the total permissible amount of*
9788 *outstanding debt by monitoring University-wide ratios that measure debt compared to University*
9789 *balance-sheet resources and annual debt service burden. These measures are monitored and reviewed*
9790 *regularly in light of the University's current strategic initiatives and expected debt requirements. The*
9791 *Board of Visitors shall periodically review and approve the University's debt capacity and debt*
9792 *management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of*
9793 *Virginia for review and comment prior to their adoption by the University.*

9794 **XI. INVESTMENT POLICY.**

9795 *It is the policy of the University to invest its operating and reserve funds solely in the interest of the*
9796 *University and in a manner that will provide the highest investment return with the maximum security*
9797 *while meeting daily cash flow demands and conforming to the Investment of Public Funds Act*
9798 *(§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence*
9799 *and diligence under the circumstances then prevailing that a prudent person acting in a like capacity*
9800 *and familiar with such matters would use in the conduct of an enterprise of a like character and with*
9801 *like aims.*

9802 *Endowment investments shall be invested and managed in accordance with the Uniform Management*
9803 *of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.*

9804 *The Board of Visitors shall periodically review and approve the investment guidelines governing the*
9805 *University's operating and reserve funds.*

9806 **XII. INSURANCE AND RISK MANAGEMENT.**

9807 *By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any*
9808 *intent during the next biennium to withdraw from any insurance or risk management program made*
9809 *available to the University through the Commonwealth's Division of Risk Management and in which the*
9810 *University is then participating, to enable the Commonwealth to complete an adverse selection analysis*
9811 *of any such decision and to determine the additional costs to the Commonwealth that would result from*
9812 *any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University*
9813 *proceeds to withdraw from the insurance or risk management program, the University shall reimburse*
9814 *the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the*
9815 *Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University*
9816 *and the Commonwealth.*

9817 **4. That the provisions of the first, second, and third enactments of this Act shall supersede the**
9818 **terms of any management agreement between the Commonwealth and Virginia Polytechnic**
9819 **Institute and State University, The College of William and Mary in Virginia, and The University**
9820 **of Virginia, respectively, that was entered into prior to January 1, 2006. Any such management**
9821 **agreement entered into prior to January 1, 2006, shall be deemed incorporated into this Act.**

9822 **5. That the provisions of the first, second, and third enactments of this Act shall expire at**
9823 **midnight on June 30, 2010. The expiration of such enactments shall automatically result in the**
9824 **expiration of the provisions of any management agreement between the Commonwealth and**
9825 **Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia,**
9826 **and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and**
9827 **incorporated into this Act.**