

069191712

SENATE BILL NO. 675

Senate Amendments in [] — February 10, 2006

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.*

Patrons Prior to Engrossment—Senators Houck and Norment

Referred to Committee on Finance

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

ENGROSSED

SB675E

59 *the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has*
60 *entered into a management agreement with the Commonwealth to be governed by and in accordance*
61 *with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.*

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

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

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

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

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

74 **ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.**

75 **SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.**

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

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

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

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

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

122 [Pursuant to subsection D 2 c of § 23-38.88 of the Act, Virginia Tech agrees to reimburse the
 123 Commonwealth an amount mutually agreed upon with the Commonwealth for any additional costs to the
 124 Commonwealth in providing health or other group insurance benefits to employees, and in undertaking
 125 any risk management program, that are attributable to Virginia Tech's exercise of any restructured
 126 financial or operational authority set forth in Subchapter 3 of the Act and included in this Management
 127 Agreement or the policies adopted by its Board of Visitors and attached hereto as Exhibits A through F.
 128 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent
 129 during the next biennium to withdraw from any health or other group insurance or risk management
 130 program made available to the University through any agency, body corporate, political subdivision,
 131 authority, or other entity of the Commonwealth, and in which the University is then participating, to
 132 enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision
 133 and to determine the additional costs to the Commonwealth that would result from any such
 134 withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to
 135 withdraw from such health or other group insurance or risk management program, the University shall,
 136 pursuant to subdivision D 2 c of § 23-38.88, reimburse the Commonwealth for all such additional costs
 137 attributable to such withdrawal as determined by the Commonwealth's actuaries.]

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

145 SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to
 146 § 23-38.110 of the Act and subject to the provisions of this Management Agreement, Virginia Tech may
 147 be exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43
 148 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate
 149 from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the
 150 Board of Visitors shall adopt and comply with procurement policies that are based upon competitive
 151 principles and seek competition to the maximum practical degree. The Policy Governing the
 152 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials
 153 and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the
 154 "Procurement Rules") attached to that Policy as Attachment I constitute the policies and uniform
 155 deviations from the VPPA required by subsections A and B of § 23-38.110 of the Act.

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

169 SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that
 170 a Covered Institution include in its management agreement with the Commonwealth the quantification of
 171 cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter
 172 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been
 173 implemented by Virginia Tech, the parties agree that Virginia Tech is not in a position to quantify any
 174 such cost savings at this time, although Virginia Tech expects that there will be cost savings resulting
 175 from the additional authority granted to Virginia Tech pursuant to Subchapter 3 of the Act and that
 176 such cost savings will be part of the determinations made during the reviews, assessments, and audits to
 177 be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint
 178 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and
 179 as otherwise described in Section 2.1.1 above.

180 SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that Virginia Tech
 181 shall continue to fully participate in, and receive funding support from the many and varied programs

182 established now or in the future by the Commonwealth to provide support for Virginia's public
183 institutions of higher education and for Virginians attending such institutions, including but not limited
184 to: the state capital outlay and bond financing initiatives undertaken from time to time by the
185 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq.
186 of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the
187 Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student
188 financial assistance programs; and other statewide programs or initiatives that exist, or may be
189 established, in support of the Commonwealth's higher education institutions, programs, or activities.

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

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

206 Virginia Tech and the Commonwealth also acknowledge and agree that, pursuant to subsection A of
207 § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of
208 Visitors of Virginia Tech shall assume full responsibility for management of Virginia Tech, subject to the
209 requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this
210 Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The
211 Board of Visitors shall be fully accountable for (a) the management of Virginia Tech as provided in the
212 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,
213 and (c) meeting such other provisions as are set forth in this Management Agreement.

214 SECTION 2.2. State Goals.

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

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

220 1. In addition to its six-year target of achieving \$ 227 [million] in external research by 2011-12
221 [which is the last year of the six-year plan], the University commits to match from institutional funds,
222 on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation
223 Act above the amount provided from institutional funds for research in 2005-06.

224 2. In a concerted effort to provide educational opportunities to Virginia students attending
225 institutions in the Virginia Community College System ("VCCS") and Richard Bland College, the
226 University commits to work with the University of Virginia and the College of William and Mary in
227 Virginia to establish a program under which these three institutions will increase significantly the
228 number of such students transferring to their institutions. Specifically, pursuant to this program, the
229 University, the University of Virginia and the College of William and Mary in Virginia collectively
230 commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the
231 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the
232 number enrolled in 2004-05, for a total of [approximately] 900 such transfer students each year, and
233 (ii) by the end of the decade, not less than approximately 650 new such transfer students each year over
234 the number enrolled in 2004-05, for a total of [approximately] 1,250 such transfer students each year.
235 The three institutions have agreed that they will mutually determine how to divide the responsibility for
236 these additional transfer students equitably among themselves.

237 3. As an institutional priority and obligation, the University commits to the Governor and General
238 Assembly to work meaningfully and visibly with an economically distressed region or local area of the
239 Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in
240 education, income, employment, and other factors. The University commits to establish a formal
241 partnership with that area to develop jointly a specific action plan that builds on the University's
242 programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise
243 to stimulate economic development in the area to make the area more economically viable, and to

improve student achievement and teacher and administrator skill sets in a school division in that area. The University shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.

SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the Code of Virginia, Virginia Tech, 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 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 [~~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.~~], 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 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

305 *this Management Agreement or the attached Board of Visitors policies beyond the independent financial*
306 *and operational authority that it had prior to the effective date of this Management Agreement or that it*
307 *may be granted by law in the future.*

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

311 *SECTION 2.4.1. The Appropriation Act. The Commonwealth and Virginia Tech agree that, pursuant*
312 *to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is*
313 *a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act,*
314 *or this Management Agreement, or the Board of Visitors policies attached to this Management*
315 *Agreement as Exhibits A through F, the provisions of the Appropriation Act shall control, and shall*
316 *continue to control unless provided otherwise by law.*

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

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

328 *SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of*
329 *§ 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,*
330 *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,*
331 *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*
332 *of Virginia, Virginia Tech shall remain a public institution of higher education of the Commonwealth*
333 *following the effective date of this Management Agreement, and shall retain the authority granted and*
334 *any obligations required by such provisions, unless and until provided otherwise by law other than the*
335 *Act. In addition, Virginia Tech shall retain the authority, and any obligations related to the exercise of*
336 *such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et*
337 *seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.),*
338 *Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.),*
339 *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*
340 *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*
341 *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*
342 *seq.), unless and until provided otherwise by law other than the Act.*

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

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

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

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

358 *SECTION 3.1. Amendments. [Any substantial and material change to or deviation from this*
359 *Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F shall*
360 *require the execution by the parties of an amendment to this Management Agreement or a new*
361 *Management Agreement pursuant to the provisions of subsection D of § 23-38.88 and Any change to or*
362 *deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits*
363 *A through F shall be reported to the Secretaries of Finance, Administration, Education, and Technology*
364 *and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations*
365 *and shall be posted on the University's website. The change or deviation shall become effective unless*
366 *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] 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 Virginia Tech 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 Virginia Tech and to the members of the General Assembly, and (ii) Virginia Tech 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 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 [~~÷ Authority to Renew.~~ This Management Agreement shall remain in effect for a period of three years from its effective date. Pursuant to subsection D 3 of § 23-38.88 of the Act, the Commonwealth and Virginia Tech may by mutual agreement renew this Agreement for successive five-year periods, or may enter into a new management agreement.— If after its initial three-year term, or a successive five-year term if it is renewed by the parties, this Management Agreement is not renewed or a new agreement executed prior to the expiration of the three-year or five-year term, as applicable, this Management Agreement shall remain in effect on a provisional basis for a period of one year.— If, after the expiration of the provisional one-year period, this Management Agreement has not been renewed or a new agreement executed, Virginia Tech shall no longer be granted any of the financial or operational authority set forth in Subchapter 3 of the Act, unless and until such time as a new management agreement is entered into between Virginia Tech and the Commonwealth. . This Management Agreement shall expire at midnight on June 30, 2010.]

WHEREFORE, the foregoing Management Agreement has been executed [~~by the undersigned as of this 15th day of November, 2005, and shall become effective on the effective date of the Appropriation Act or amendments to an Appropriation Act enacted by the General Assembly containing a recommendation for its approval 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 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.

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.

"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.

"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.

"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 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 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. SCOPE OF POLICY.

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

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

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. CAPITAL PROGRAM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This 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

551 to:

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

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

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

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

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

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

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

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

574 B. A prequalification procedure for contractors or products;

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

577 D. A prompt payment procedure.

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

581 VIII. DESIGN REVIEWS AND CODE APPROVALS.

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

591 The President, acting through the Executive Vice President and Chief Operating Officer, shall
592 designate a Building Official responsible for building code compliance by either (i) hiring an individual
593 to be the University Building Official, or (ii) continuing to use the services of the Department of
594 General Services, Division of Engineering and Buildings, to perform the Building Official function. If
595 option (i) is selected, the individual hired as the University Building Official shall be a full-time
596 employee, a registered professional architect or engineer, and certified by the Department of Housing
597 and Community Development to perform this Building Official function. The University Building Official
598 shall issue building permits for each capital project required by the VUSBC to have a building permit,
599 and shall determine the suitability for occupancy of, and shall issue certifications for building
600 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification,
601 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital
602 project and that such capital project has been inspected by the State Fire Marshal or his designee.
603 When serving as the University Building Official, such individual shall [organizationally] report
604 directly and exclusively to the Board of Visitors. If the University hires its own University Building
605 Official, it shall fulfill the code review requirement [by:

606 A. ~~Maintaining~~ by maintaining] a review unit supported by resources and staff who are certified by
607 the Department of Housing and Community Development in accordance with § 36-137 of the Code of
608 Virginia for such purpose and who shall review plans, specifications and documents for compliance with
609 building codes and standards and perform required inspections of work in progress and the completed
610 capital project. No individual licensed professional architect or engineer hired or contracted with to
611 perform these functions shall also perform other building code-related design, construction,
612 facilities-related project management or facilities management functions for the University on the same

capital project [÷ ð

B. Using the services of the Department of General Services, Division of Engineering and Buildings, to perform the building code review duties as described above. .]

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 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 [~~property, both real and personal~~ 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.

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

799 *D. Execution of Leases.*

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

808 *E. Capital Leases.*

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

812 *F. Compliance with Applicable Law.*

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

815 *G. Certification of Occupancy.*

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

818
819 *EXHIBIT C*

820
821 *MANAGEMENT AGREEMENT*
822 *BETWEEN*
823 *THE COMMONWEALTH OF VIRGINIA*
824 *AND*
825 *VIRGINIA POLYTECHNIC INSTITUTE*
826 *AND STATE UNIVERSITY*
827 *PURSUANT TO*
828 *THE RESTRUCTURED HIGHER EDUCATION*
829 *FINANCIAL AND ADMINISTRATIVE OPERATIONS*
830 *ACT OF 2005*

831
832
833 *POLICY GOVERNING*
834 *INFORMATION TECHNOLOGY*

835
836
837 *THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE*
838 *AND STATE UNIVERSITY*
839 *POLICY GOVERNING INFORMATION TECHNOLOGY*

840 *I. PREAMBLE.*

841 *The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter*
842 *4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions*
843 *of higher education in the Commonwealth of Virginia that have entered into a Management Agreement*
844 *with the Commonwealth "may be exempt from the provisions governing the Virginia Information*
845 *Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the*
846 *Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title*
847 *2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such]*
848 *institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the Code*
849 *of Virginia. This Information Technology Policy shall become effective upon the effective date of a*
850 *Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between the*
851 *Commonwealth and the University that incorporates this Policy.*

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

854 *II. DEFINITIONS.*

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

857 *"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*
858 *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.

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

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

930 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as
931 they currently exist and from time to time may be amended; and

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

934 D. Project Management.

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

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

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

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

956 The University shall be specifically exempt from:

957 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project
958 management) as it currently exists and from time to time may be amended;

959 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management)
960 as they currently exist and from time to time may be amended; and

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

963 The State CIO and the Information Technology Investment Board shall continue to have the authority
964 regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of
965 § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall
966 continue to provide the University with reasonable notice of, and a reasonable opportunity to correct,
967 any identified problems before a project is terminated.

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

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

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

979 F. Audits.

980 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines
981 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 D

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 THE PROCUREMENT OF GOODS, SERVICES, INSURANCE, AND CONSTRUCTION AND 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

1043 Subchapter 3 of the Act.

1044 "Effective Date" means the effective date of the Management Agreement.

1045 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
1046 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
1047 missions of the individual public institutions of higher education of the Commonwealth.

1048 "Goods" means all material, equipment, supplies, and printing, including information technology and
1049 telecommunications goods such as automated data processing hardware and software.

1050 "Management Agreement" means the agreement required by subsection D of § 23-38.88 between the
1051 Commonwealth of Virginia and Virginia Polytechnic Institute and State University. "Rules" means the
1052 "Rules Governing Procurement of Goods, Services, Insurance, and Construction" attached to this Policy
1053 as Attachment 1.

1054 "Services" as used in this Policy means any work performed by an independent contractor wherein
1055 the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of
1056 equipment, materials and supplies, and shall include both professional services, which include the
1057 practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and
1058 nonprofessional services, which include any service not specifically identified as professional services.

1059 "Surplus materials" means personal property including, but not limited to, materials, supplies,
1060 equipment and recyclable items, that are determined to be surplus by the University.

1061 "University" means Virginia Polytechnic Institute and State University, consisting of the University
1062 Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station
1063 Division (State Agency 229).

1064 III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

1065 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
1066 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
1067 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
1068 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
1069 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
1070 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
1071 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
1072 and procedures.

1073 IV. GENERAL PROVISIONS.

1074 A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement
1075 Policies.

1076 The University has had decentralization and pilot program autonomy in many procurement functions
1077 and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy
1078 previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore
1079 is adopted by the Board of Visitors to enable the University to develop a procurement system, as well as
1080 a surplus materials disposition system for the University as a whole. Any University electronic
1081 procurement system shall integrate or interface with the Commonwealth's electronic procurement system.

1082 This Policy shall be effective on the Effective Date of the University's initial Management Agreement
1083 with the Commonwealth. The implementing policies and procedures adopted by the President, acting
1084 through the Executive Vice President and Chief Operating Officer or his designee, to implement this
1085 Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting
1086 procurements at the University, including policies regarding the nature and amounts of procurements
1087 that may be undertaken without the approval of the Board of Visitors, or of the President, acting
1088 through the Executive Vice President and Chief Operating Officer.

1089 B. Scope and Purpose of University Procurement Policies.

1090 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be
1091 the policy of the University that procurements conducted by the University result in the purchase of high
1092 quality goods and services at reasonable prices, and that the University be free, to the maximum extent
1093 permitted by law and this Policy, from constraining policies that hinder the ability of the University to
1094 do business in a competitive environment. This Policy, together with the Rules Governing Procurement
1095 of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to
1096 all procurements undertaken by the University, regardless of the source of funds.

1097 C. Collaboration, Communication, and Cooperation with the Commonwealth.

1098 The University is committed to developing, maintaining, and sustaining collaboration,
1099 communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy,
1100 particularly with the Offices of the Secretaries of Administration and Technology, the Department of
1101 General Services, and the Virginia Information Technologies Agency. Identifying business objectives and
1102 goals common to both the University and the Commonwealth and the mechanisms by which such
1103 objectives and goals may be jointly pursued and achieved are among the desired outcomes of such
1104 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 [~~attached to this Policy as Attachment 1~~ , 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 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 engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.

The University shall maintain an ongoing program to provide professional development opportunities 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.

A. 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 University, 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.

B. 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.

C. 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, 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 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,

1289 services, insurance, and construction by the Institution, excluding the University of Virginia Medical
1290 Center:

1291 § 1. Purpose. - The purpose of these Rules is to enunciate the public policies pertaining to
1292 procurement of good, services, insurance, and construction by the Institution from nongovernmental
1293 sources, to include governmental procurement that may or may not result in monetary consideration for
1294 either party. These Rules shall apply whether the consideration is monetary or nonmonetary and
1295 regardless of whether the Institution, the contractor, or some third party is providing the consideration.

1296 § 2. Scope of Procurement Authority. - Subject to these Rules, and the Institution's continued
1297 substantial compliance with the terms and conditions of its Management Agreement with the
1298 Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the
1299 Institution shall have and shall be authorized to have and exercise all of the authority relating to
1300 procurement of goods, services, insurance, and construction, including but not limited to capital
1301 outlay-related procurement and information technology-related procurement, that Institutions are
1302 authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.

1303 § 3. Competition is the Priority. - To the end that the Institution shall obtain high quality goods and
1304 services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial
1305 manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have
1306 access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the
1307 intent of the governing body of the Institution that competition be sought to the maximum feasible
1308 degree, that procurement procedures involve openness and administrative efficiency, that individual
1309 public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing
1310 contract awards be made clear in advance of the competition, that specifications reflect the procurement
1311 needs of the purchasing body rather than being drawn to favor a particular vendor, and that the
1312 purchaser and vendor freely exchange information concerning what is sought to be procured and what
1313 is offered. The Institution may consider best value concepts when procuring goods and nonprofessional
1314 services, but not construction or professional services. Professional services will be procured using a
1315 qualification-based selection process. The criteria, factors, and basis for consideration of best value and
1316 the process for the consideration of best value shall be as stated in the procurement solicitation.

1317 § 4. Definitions. - As used in these Rules:

1318 "Affiliate" means an individual or business that controls, is controlled by, or is under common
1319 control with another individual or business. A person controls an entity if the person owns, directly or
1320 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition
1321 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
1322 members of the board of directors or similar governing body of the business or (ii) is convertible into,
1323 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
1324 partnership interest shall be deemed to be a voting security.

1325 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
1326 and various elements of required services that in total are optimal relative to the Institution's needs.

1327 "Business" means any type of corporation, partnership, limited liability company, association, or sole
1328 proprietorship operated for profit.

1329 "Competitive negotiation" is a method of contractor selection that includes the following elements:

1330 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
1331 procured, specifying the factors that will be used in evaluating the proposal and containing or
1332 incorporating by reference the other applicable contractual terms and conditions, including any unique
1333 capabilities or qualifications that will be required of the contractor.

1334 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
1335 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
1336 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
1337 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
1338 also shall be published on the Department of General Services' central electronic procurement website
1339 and may be published on other appropriate websites. In addition, proposals may be solicited directly
1340 from potential contractors.

1341 3. a. Procurement of professional services. The procurement of professional services for capital
1342 projects shall be conducted using a qualification-based selection process. The Institution shall engage in
1343 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the
1344 basis of initial responses and with emphasis on professional competence, to provide the required
1345 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
1346 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed
1347 project, as well as alternative concepts. The Request for Proposal shall not, however, request that
1348 offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may
1349 discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and
1350 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 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.

1412 "Construction" means building, altering, repairing, improving or demolishing any structure, building
1413 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

1414 "Construction management contract" means a contract in which a party is retained by the owner to
1415 coordinate and administer contracts for construction services for the benefit of the owner, and may also
1416 include, if provided in the contract, the furnishing of construction services to the owner.

1417 "Covered Institution" or "Institution" means, on and after the effective date of the initial management
1418 agreement with the Commonwealth of Virginia, a public institution of higher education of the
1419 Commonwealth that has entered into a management agreement with the Commonwealth to be governed
1420 by the provisions of Subchapter 3 of the Restructuring Act. "Design-build contract" means a contract
1421 between the Institution and another party in which the party contracting with the Institution agrees to
1422 both design and build the structure, roadway or other item specified in the contract.

1423 "Goods" means all material, equipment, supplies, and printing, including information technology and
1424 telecommunications goods such as automated data processing hardware and software. "Informality"
1425 means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to
1426 Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule
1427 for the goods, services or construction being procured. "Multiphase professional services contract"
1428 means a contract for the providing of professional services where the total scope of work of the second
1429 or subsequent phase of the contract cannot be specified without the results of the first or prior phase of
1430 the contract.

1431 "Nonprofessional services" means any services not specifically identified as professional services in
1432 the definition of professional services and includes small construction projects valued not over
1433 \$1,000,000; provided that subdivision 3a of the definition of "competitive negotiation" in this section
1434 shall still apply to professional services for such small construction projects.

1435 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who,
1436 at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the
1437 sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured
1438 under the contract, and who at such time is eligible and qualified in all respects to perform that
1439 contract, and who would have been eligible and qualified to submit a bid or proposal had the contract
1440 been procured through competitive sealed bidding or competitive negotiation.

1441 "Professional services" means work performed by an independent contractor within the scope of the
1442 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
1443 dentistry, medicine, optometry, pharmacy or professional engineering.

1444 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
1445 post, commission, committee, institution, board or political subdivision created by law to exercise some
1446 sovereign power or to perform some governmental duty, and empowered by law to undertake the
1447 activities described in these Rules.

1448 "Public contract" means an agreement between the Institution and a nongovernmental source that is
1449 enforceable in a court of law.

1450 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
1451 fully the contract requirements and the moral and business integrity and reliability that will assure good
1452 faith performance, and who has been prequalified, if required.

1453 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
1454 to the Invitation to Bid.

1455 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
1456 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

1457 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
1458 adopted by the governing body of the Covered Institution.

1459 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
1460 goods or nonprofessional services through real-time electronic bidding, with the award being made to
1461 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
1462 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
1463 established for bid opening.

1464 "Services" means any work performed by an independent contractor wherein the service rendered
1465 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
1466 and supplies.

1467 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
1468 environment and individual goals that utilizes work experience and related services for assisting the
1469 handicapped person to progress toward normal living and a productive vocational status.

1470 § 5. Methods of procurement. -

1471 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
1472 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,
1473 or competitive negotiation as provided in this section, unless otherwise authorized by law.

1474 B. Professional services shall be procured by competitive negotiation. Qualification-based selection
1475 shall be used for design services.

1476 C. Goods, services, or insurance may be procured by competitive negotiation.

1477 D. Construction may be procured only by competitive sealed bidding, except that competitive
1478 negotiation may be used in the following instances upon a determination made in advance by the
1479 Institution and set forth in writing that competitive sealed bidding is either not practicable or not
1480 fiscally advantageous to the public, which writing shall document the basis for this determination:

1481 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

1482 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;

1483 3. By the Institution for the construction of highways and any draining, dredging, excavation,
1484 grading or similar work upon real property; or

1485 E. Upon a determination in writing that there is only one source practicably available for that which
1486 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed
1487 bidding or competitive negotiation. The writing shall document the basis for this determination. The
1488 Institution shall issue a written notice stating that only one source was determined to be practicably
1489 available, and identifying that which is being procured, the contractor selected, and the date on which
1490 the contract was or will be awarded. This notice shall be posted in a designated public area, which may
1491 be the Department of General Services' website for the Commonwealth's central electronic procurement
1492 system, or published in a newspaper of general circulation on the day the Institution awards or
1493 announces its decision to award the contract, whichever occurs first. Public notice shall also be
1494 published on the Department of General Services' website for the Commonwealth's central electronic
1495 procurement system and may be published on other appropriate websites.

1496 F. In case of emergency, a contract may be awarded without competitive sealed bidding or
1497 competitive negotiation; however, such procurement shall be made with such competition as is
1498 practicable under the circumstances. A written determination of the basis for the emergency and for the
1499 selection of the particular contractor shall be included in the contract file. The Institution shall issue a
1500 written notice stating that the contract is being awarded on an emergency basis, and identifying that
1501 which is being procured, the contractor selected, and the date on which the contract was or will be
1502 awarded. This notice shall be posted in a designated public area, which may be the Department of
1503 General Services' website for the Commonwealth's central electronic procurement system, or published
1504 in a newspaper of general circulation on the day the Institution awards or announces its decision to
1505 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may
1506 also be published on the Department of General Services' website for the Commonwealth's central
1507 electronic procurement system and other appropriate websites.

1508 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive
1509 sealed bids or competitive negotiation for single or term contracts for goods and services other than
1510 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;
1511 however, such small purchase procedures shall provide for competition wherever practicable.

1512 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive
1513 negotiation for single or term contracts for professional services if the aggregate or the sum of all
1514 phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for
1515 competition wherever practicable.

1516 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase
1517 of goods, products or commodities from a public auction sale is in the best interests of the public, such
1518 items may be purchased at the auction, including online public auctions. The writing shall document the
1519 basis for this determination.

1520 J. The purchase of goods or nonprofessional services, but not construction or professional services,
1521 may be made by reverse auctioning.

1522 § 6. Cooperative procurement. -

1523 A. In circumstances where the Institution determines and documents that statewide contracts for
1524 goods and services, including information technology and telecommunications goods and services, do
1525 not provide goods and services to the Institution that meet its business goals and objectives, the
1526 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement
1527 arrangement on behalf of or in conjunction with public bodies, public or private health or educational
1528 institutions, other public or private organizations or entities, including public-private partnerships,
1529 charitable organizations, health care provider alliances or purchasing organizations or entities, or with
1530 public agencies or institutions or group purchasing organizations of the several states, territories of the
1531 United States, or the District of Columbia, for the purpose of combining requirements to effect cost
1532 savings or reduce administrative expense in any acquisition of goods and services, other than
1533 professional services. The Institution may purchase from any authority, department, agency, institution,
1534 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not

1535 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to
1536 bid specified that the procurement was being conducted on behalf of other public bodies. In such
1537 instances, deviation from the procurement procedures set forth in these Rules and the administrative
1538 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of
1539 the above, use of cooperative contracts shall conform to the business requirements of the
1540 Commonwealth's electronic procurement system, including the requirement for payment of applicable
1541 fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that
1542 will allow for participation in any such arrangement.

1543 B. In circumstances where statewide contracts for goods and services, including information
1544 technology and telecommunications goods and services, do not provide goods and services to meet the
1545 Institution's business goals and objectives, and as authorized by the United States Congress and
1546 consistent with applicable federal regulations, and provided the terms of the contract permit such
1547 purchases:

1548 1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services
1549 Administration contract or a contract awarded by any other agency of the U.S. government; and

1550 2. The Institution may purchase telecommunications and information technology goods and
1551 nonprofessional services from a U.S. General Services Administration contract or a contract awarded by
1552 any other agency of the U.S. government.

1553 § 7. Design-build or construction management contracts authorized. -

1554 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
1555 price design-build basis or construction management basis in accordance with the provisions of this
1556 section.

1557 B. Procurement of construction by the design-build or construction management method shall be a
1558 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
1559 qualifications. Based upon the information submitted and any other relevant information which the
1560 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
1561 selected by the Commonwealth and requested to submit proposals.

1562 § 8. Modification of the contract. -

1563 A. A contract awarded by the Institution may include provisions for modification of the contract
1564 during performance, but no fixed-price contract may be increased by more than twenty-five percent of
1565 the amount of the contract or \$50,000, whichever is greater, without the advance written approval of
1566 the Institution's president or his designee. In no event may the amount of any contract, without adequate
1567 consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the
1568 consequences of an error in its bid or offer.

1569 B. The Institution may extend the term of an existing contract for services to allow completion of any
1570 work undertaken but not completed during the original term of the contract.

1571 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
1572 modifications.

1573 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

1574 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
1575 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
1576 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
1577 Institution shall include businesses selected from a list made available by the Department of Minority
1578 Business Enterprise.

1579 B. The Institution shall establish programs consistent with this section to facilitate the participation
1580 of small businesses and businesses owned by women and minorities in procurement transactions. The
1581 programs established shall be in writing and shall include cooperation with the Department of Minority
1582 Business Enterprise, the United States Small Business Administration, and other public or private
1583 agencies. The Institution shall submit annual progress reports on minority business procurement to the
1584 Department of Minority Business Enterprise.

1585 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive
1586 analysis that documents a statistically significant disparity between the availability and utilization of
1587 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require
1588 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing
1589 law.

1590 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
1591 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination
1592 that employing ex-offenders on the specific contract is not in its best interest.

1593 § 10. Employment discrimination by contractor prohibited; required contract provisions. - The
1594 Institution shall include in every contract of more than \$10,000 the following provisions:

1595 1. During the performance of this contract, the contractor agrees as follows:

1596 a. The contractor will not discriminate against any employee or applicant for employment because of

1597 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating
 1598 to discrimination in employment, except where there is a bona fide occupational qualification reasonably
 1599 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous
 1600 places, available to employees and applicants for employment, notices setting forth the provisions of this
 1601 nondiscrimination clause.

1602 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the
 1603 contractor, will state that such contractor is an equal opportunity employer.

1604 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation
 1605 shall be deemed sufficient for the purpose of meeting the requirements of this section.

1606 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every
 1607 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each
 1608 subcontractor or vendor.

1609 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. -

1610 The Institution shall include in every contract over \$10,000 the following provisions: During the
 1611 performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the
 1612 contractor's employees; (ii) post in conspicuous places, available to employees and applicants for
 1613 employment, a statement notifying employees that the unlawful manufacture, sale, distribution,
 1614 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's
 1615 workplace and specifying the actions that will be taken against employees for violations of such
 1616 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the
 1617 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the
 1618 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be
 1619 binding upon each subcontractor or vendor.

1620 For the purposes of this section, "drug-free workplace" means a site for the "performance of work
 1621 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the
 1622 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,
 1623 dispensation, possession or use of any controlled substance or marijuana during the performance of the
 1624 contract.

1625 § 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a
 1626 certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or
 1627 manufacturer named and shall be deemed to convey the general style, type, character, and quality of the
 1628 article desired. Any article that the Institution in its sole discretion determines to be the equal of that
 1629 specified, considering quality, workmanship, economy of operation, and suitability for the purpose
 1630 intended, shall be accepted.

1631 § 13. Comments concerning specifications. - The Institution shall establish procedures whereby
 1632 comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal
 1633 can be received and considered prior to the time set for receipt of bids or proposals or award of the
 1634 contract.

1635 § 14. Prequalification generally; prequalification for construction. -

1636 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or
 1637 construction, and consideration of bids or proposals limited to prequalified contractors. Any
 1638 prequalification procedure shall be established in writing and sufficiently in advance of its
 1639 implementation to allow potential contractors a fair opportunity to complete the process.

1640 B. Any prequalification of prospective contractors for construction by the Institution shall be
 1641 pursuant to a prequalification process for construction projects adopted by the Institution. The process
 1642 shall be consistent with the provisions of this section.

1643 The application form used in such process shall set forth the criteria upon which the qualifications
 1644 of prospective contractors will be evaluated. The application form shall request of prospective
 1645 contractors only such information as is appropriate for an objective evaluation of all prospective
 1646 contractors pursuant to such criteria. The form shall allow the prospective contractor seeking
 1647 prequalification to request, by checking the appropriate box, that all information voluntarily submitted
 1648 by the contractor pursuant to this subsection shall be considered a trade secret or proprietary
 1649 information subject to the provisions of subsection D of § 34 of these Rules.

1650 In all instances in which the Institution requires prequalification of potential contractors for
 1651 construction projects, advance notice shall be given of the deadline for the submission of
 1652 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set
 1653 for the submission of bids for such construction so as to allow the procedures set forth in this
 1654 subsection to be accomplished.

1655 At least thirty days prior to the date established for submission of bids or proposals under the
 1656 procurement of the contract for which the prequalification applies, the Institution shall advise in writing
 1657 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 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 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

1781 labor to or perform any subcontract or other work agreement for the person or firm to whom the
1782 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
1783 which the withdrawn bid was submitted.

1784 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
1785 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the
1786 bid price, provided such bidder is a responsible and responsive bidder.

1787 § 24. Contract Pricing Arrangements. -

1788 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
1789 basis that is not prohibited by these Rules.

1790 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall
1791 be awarded on the basis of cost plus a percentage of cost.

1792 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis
1793 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in
1794 whole or part as a percentage of such claims, shall not be prohibited by this section.

1795 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

1796 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has
1797 obtained, and continues to maintain for the duration of the work, workers' compensation coverage
1798 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides
1799 prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

1800 B. The Department of General Services shall provide the form to the Institution. Failure of the
1801 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
1802 of subsection A.

1803 C. No subcontractor shall perform any work on a construction project of the Institution unless he
1804 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
1805 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

1806 § 26. Retainage on construction contracts. -

1807 A. In any contract issued by the Institution for construction that provides for progress payments in
1808 installments based upon an estimated percentage of completion, the contractor shall be paid at least
1809 ninety-five percent of the earned sum when payment is due, with no more than five percent being
1810 retained to ensure faithful performance of the contract. All amounts withheld may be included in the
1811 final payment.

1812 B. Any subcontract for a public project that provides for similar progress payments shall be subject
1813 to the provisions of this section.

1814 § 27. Public construction contract provisions barring damages for unreasonable delays declared
1815 void. -

1816 A. Any provision contained in any public construction contract of the Institution that purports to
1817 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
1818 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
1819 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
1820 causes within their control shall be void and unenforceable as against public policy.

1821 B. Subsection A shall not be construed to render void any provision of a public construction contract
1822 awarded by the Institution that:

1823 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
1824 contractor, or its subcontractors, agents or employees;

1825 2. Requires notice of any delay by the party claiming the delay;

1826 3. Provides for liquidated damages for delay; or

1827 4. Provides for arbitration or any other procedure designed to settle contract disputes.

1828 C. A contractor making a claim against the Institution for costs or damages due to the alleged
1829 delaying of the contractor in the performance of its work under any public construction contract of the
1830 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
1831 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
1832 shall be equal to the percentage of the contractor's total delay claim that is determined through
1833 litigation or arbitration to be false or to have no basis in law or in fact.

1834 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
1835 the contractor in the performance of work under any public construction contract for the Institution, it
1836 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to
1837 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution
1838 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is
1839 determined through litigation or arbitration to have been made in bad faith.

1840 § 28. Bid bonds. -

1841 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of
1842 \$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.

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

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

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

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

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

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the

1904 day on which the claimant performed the last of the labor or furnished the last of the materials for
1905 which he claims payment, stating with substantial accuracy the amount claimed and the name of the
1906 person for whom the work was performed or to whom the material was furnished. Notice to the
1907 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to
1908 such contractor at any place where his office is regularly maintained for the transaction of business.
1909 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not
1910 be subject to the time limitations stated in this subsection.

1911 C. Any action on a payment bond shall be brought within one year after the day on which the
1912 person bringing such action last performed labor or last furnished or supplied materials.

1913 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
1914 it is in writing, signed by the person whose right is waived, and executed after such person has
1915 performed labor or furnished material in accordance with the contract documents.

1916 § 34. Public inspection of certain records. -

1917 A. Except as provided in this section, all proceedings, records, contracts and other public records
1918 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
1919 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
1920 seq.).

1921 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
1922 shall not be open to public inspection.

1923 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect
1924 bid records within a reasonable time after the opening of all bids but prior to award, except in the
1925 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,
1926 bid records shall be open to public inspection only after award of the contract.

1927 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect
1928 proposal records within a reasonable time after the evaluation and negotiations of proposals are
1929 completed but prior to award, except in the event that the Institution decides not to accept any of the
1930 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection
1931 only after award of the contract.

1932 E. Any inspection of procurement transaction records under this section shall be subject to
1933 reasonable restrictions to ensure the security and integrity of the records.

1934 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in
1935 connection with a procurement transaction or prequalification application submitted pursuant to
1936 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et
1937 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to
1938 or upon submission of the data or other materials, (ii) identify the data or other materials to be
1939 protected, and (iii) state the reasons why protection is necessary.

1940 § 35. Exemption for certain transactions. -

1941 A. The provisions of these Rules shall not apply to:

1942 1. The selection of services related to the management and investment of the Institution's endowment
1943 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be
1944 governed by the Uniform Management of Institutional Funds Act (§ 55- 268.1 et seq.) as required by
1945 § 23-76.1.

1946 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the
1947 Institution. However, such purchase procedures shall provide for competition where practicable.

1948 3. Procurement of any construction or planning and design services for construction by the
1949 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is
1950 obligated to conform to procurement procedures that are established by federal statutes or regulations,
1951 whether or not those federal procedures are in conformance with the provisions of these Rules.

1952 4. The University of Virginia Medical Center.

1953 5. The purchase of goods and services by the Institution when such purchases are made under a
1954 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

1955 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
1956 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
1957 regulations not in conformance with the provisions of these Rules, the Institution may comply with such
1958 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination
1959 of the Institution's President or his designee that acceptance of the grant or contract funds under the
1960 applicable conditions is in the public interest. Such determination shall state the specific provision of
1961 these Rules in conflict with the conditions of the grant or contract.

1962 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

1963 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into
1964 contracts with faith-based organizations for the purposes described in this section on the same basis as
1965 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;

2027 8. Royalties; or
2028 9. The purchase of legal services, provided that the Office of the Attorney General has been
2029 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

2030 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
2031 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility
2032 service without competitive sealed bidding or competitive negotiation if purchased through an
2033 association of which the Institution is a member if the association was formed and is maintained for the
2034 purpose of promoting the interest and welfare of and developing close relationships with similar public
2035 bodies, provided such association has procured the insurance or electric utility services by use of
2036 competitive principles and provided that the Institution has made a determination in advance after
2037 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive
2038 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this
2039 determination.

2040 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning:
2041 "Contractor" means the entity that has a direct contract with the Institution.
2042 "Debtor" means any individual, business, or group having a delinquent debt or account with any
2043 state agency that obligation has not been satisfied or set aside by court order or discharged in
2044 bankruptcy.

2045 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
2046 provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days
2047 after receipt of a proper invoice by the Institution or its agent or (b) thirty days after receipt of the
2048 goods or services by the Institution..

2049 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor
2050 to whom the contract was awarded or to any subcontractor in the performance of the work provided for
2051 in such contract.

2052 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment
2053 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

2054 § 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the provisions
2055 of § 26 relating to retainage shall remain valid.

2056 § 42. Prompt payment of bills by the Institution. -

2057 A. The Institution shall promptly pay for the completely delivered goods or services by the required
2058 payment date.

2059 Payment shall be deemed to have been made when offset proceedings have been instituted, as
2060 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

2061 B. Separate payment dates may be specified for contracts under which goods or services are
2062 provided in a series of partial deliveries or executions to the extent that such contract provides for
2063 separate payment for such partial delivery or execution.

2064 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where
2065 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall
2066 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by
2067 the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or
2068 services.

2069 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made
2070 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these
2071 Rules.

2072 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall
2073 include:

2074 1. A payment clause that obligates the contractor to take one of the two following actions within
2075 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
2076 subcontractor under that contract:

2077 a. Pay the subcontractor for the proportionate share of the total payment received from the
2078 Institution attributable to the work performed by the subcontractor under that contract; or
2079 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the
2080 subcontractor's payment with the reason for nonpayment.

2081 2. A payment clause that requires (i) individual contractors to provide their social security numbers
2082 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
2083 numbers.

2084 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts
2085 owed by the contractor that remain unpaid after seven days following receipt by the contractor of
2086 payment from the Institution for work performed by the subcontractor under that contract, except for
2087 amounts withheld as allowed in subdivision 1.

2088 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 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.

2150 *B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,*
2151 *prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the*
2152 *difference between the bid sought to be withdrawn and the next low bid. Such security shall be released*
2153 *only upon a final determination that the bidder was entitled to withdraw the bid.*

2154 *C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an*
2155 *honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the*
2156 *Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation*
2157 *to Bid, the sole relief shall be withdrawal of the bid.*

2158 *§ 49. Determination of nonresponsibility. -*

2159 *A. Following public opening and announcement of bids received on an Invitation to Bid, the*
2160 *Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed*
2161 *bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent*
2162 *low bidder is responsible. If the Institution so determines, then it may proceed with an award in*
2163 *accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution*
2164 *determines that the apparent low bidder is not responsible, it shall proceed as follows:*

2165 *1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify*
2166 *the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for*
2167 *the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that*
2168 *relate to the determination, if so requested by the bidder within five business days after receipt of the*
2169 *notice.*

2170 *2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information*
2171 *challenging the evaluation. The Institution shall issue its written determination of responsibility based on*
2172 *all information in the possession of the Institution, including any rebuttal information, within five*
2173 *business days of the date the Institution received the rebuttal information. At the same time, the*
2174 *Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

2175 *3. Such notice shall state the basis for the determination, which shall be final unless the bidder*
2176 *appeals the decision within ten days after receipt of the notice by invoking administrative procedures*
2177 *meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action*
2178 *as provided in § 54.*

2179 *The provisions of this subsection shall not apply to procurements involving the prequalification of*
2180 *bidders and the rights of any potential bidders under such prequalification to appeal a decision that*
2181 *such bidders are not responsible.*

2182 *B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the*
2183 *Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in*
2184 *accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or*
2185 *conditions of the Invitation to Bid, and the award of the contract in question has not been made, the*
2186 *sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or*
2187 *directed award as provided in subsection A of § 54, or both.*

2188 *If it is determined that the decision of the Institution was not an honest exercise of discretion, but*
2189 *rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable*
2190 *state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract*
2191 *has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

2192 *C. A bidder contesting a determination that he is not a responsible bidder for a particular contract*
2193 *shall proceed under this section, and may not protest the award or proposed award under the*
2194 *provisions of § 50 of these Rules.*

2195 *D. Nothing contained in this section shall be construed to require the Institution, when procuring by*
2196 *competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed*
2197 *to be the most advantageous.*

2198 *§ 50. Protest of award or decision to award. -*

2199 *A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall*
2200 *submit the protest in writing to the Institution, or an official designated by the Institution, no later than*
2201 *ten days after the award or the announcement of the decision to award, whichever occurs first. Public*
2202 *notice of the award or the announcement of the decision to award shall be given by the Institution in*
2203 *the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any*
2204 *potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to*
2205 *protest the award or decision to award such contract shall submit the protest in the same manner no*
2206 *later than ten days after posting or publication of the notice of such contract as provided in § 5 of these*
2207 *Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part*
2208 *upon information contained in public records pertaining to the procurement transaction that are subject*
2209 *to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall*
2210 *expire ten days after those records are available for inspection by such bidder or offeror under § 34, or*
2211 *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 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

2273 to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of
2274 prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder,
2275 having been previously determined by the Institution to be not responsible in accordance with § 4, is
2276 found by the court to be a responsible bidder, the court may direct the Institution to award the contract
2277 to such bidder in accordance with the requirements of this section and the Invitation to Bid.

2278 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
2279 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
2280 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
2281 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
2282 or the terms or conditions of the Invitation to Bid.

2283 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a
2284 sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award
2285 or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
2286 court challenging a proposed award or the award of a contract, which shall be reversed only if the
2287 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,
2288 but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable
2289 state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

2290 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
2291 of reasonable security to protect the Institution.

2292 E. A contractor may bring an action involving a contract dispute with the Institution in the
2293 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
2294 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
2295 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
2296 Accounts.

2297 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of
2298 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or
2299 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same
2300 procurement transaction unless the Institution agrees otherwise.

2301 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a
2302 contractor.

2303 § 55. Administrative appeals procedure. -

2304 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to
2305 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from
2306 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes
2307 arising during the performance of a contract, or (v) any of these. Such administrative procedure may
2308 include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a
2309 disinterested person or panel, the opportunity to present pertinent information and the issuance of a
2310 written decision containing findings of fact. The disinterested person or panel shall not be an employee
2311 of the governmental entity against whom the claim has been filed. The findings of fact shall be final and
2312 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so
2313 grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings
2314 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these
2315 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a
2316 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution
2317 Council in establishing an Alternative Dispute Resolution ("ADR") procedure.

2318 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute
2319 judicial review if such action is brought within thirty days of receipt of the written decision.

2320 § 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes
2321 arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and
2322 other alternative dispute resolution procedures. However, such procedures shall be nonbinding and
2323 subject to § 2.2-514 of the Code of Virginia, as applicable.

2324 § 57. Ethics in public contracting. - The Institution and its governing body, officers and employees
2325 shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement
2326 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

2327

2328

2329

2330

2331

2332

2333

2334

[ATTACHMENT 2]

Memorandum of Agreement

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

ERP/SciQuest Implementation with eVA

The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute
and State University (University) agree to the following:

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

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 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

2396 responsibility of the University. The solution must provide for orders, change orders and cancellations.

2397 Guidelines

2398 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for
2399 electronic procurement between the University and the CoVA..

2400 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of
2401 8PM and 4AM. eVA will transmit registered vendor orders it receives within fifteen minutes or less.

2402 3. Non-exempt orders to un-registered vendors are to be transmitted to eVA for loading to the Data
2403 Warehouse. The University shall be responsible for payment of all eVA transaction fees for non-exempt
2404 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and
2405 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements
2406 for unregistered vendor orders.

2407 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA
2408 standard format.

2409 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

2410 6. eVA Interface standard does not currently support PCard orders; however these orders may be
2411 processed via the interface as (a) confirming orders or (b) orders for pcards on file with the vendor.

2412 Schedule

2413 The University shall implement this agreement no later than July 2006.

2414 Metrics

2415 A. The University shall comply with the following Governor's eVA Management Objective

2416 95% of all non-exempt orders to be processed by eVA. Includes non-exempt orders issued by end
2417 users (PCard & LPO) and the central purchasing office. Nonexempt orders to unregistered vendors
2418 received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood
2419 that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory
2420 processing through eVA. All non-exempt orders not processed by eVA shall be reported on the eVA
2421 Dashboard and the corresponding non-use fee paid by the University.

2422 B. The University shall meet the following management objectives for electronic procurement:

2423 1. Provide end users, including purchase-card users, access to an electronic system for buying;

2424 2. Conduct business with eVA registered vendors whenever possible;

2425 3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers
2426 electronically using eVA;

2427 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar
2428 value, that include commodity codes, complete item descriptions, quantities, and unit prices;

2429 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five
2430 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and
2431 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the
2432 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to
2433 monitor the usage of confirming orders with the objective of reducing their numbers to the extent
2434 possible.

2435 The University agrees that, for confirming orders, it will resolve any vendor dispute, including
2436 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such
2437 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or
2438 CGI-AMS.

2439 The University further agrees that:

2440 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
2441 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
2442 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

2443 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
2444 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

2445 c. In the event the University does not provide resolution notification to the eVA Business Manager
2446 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
2447 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

2448 6. Timely process electronic change orders and cancellations;

2449 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA web site except
2450 as specifically exempted by DPS;

2451 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
2452 end users using the ERP/SciQuest Integration system. The University will be responsible for the
2453 accuracy of contract catalog pricing loaded into the ERP/SciQuest.

2454 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
2455 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10
2456 below);

2457 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.

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

EXHIBIT E

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 HUMAN RESOURCES FOR PARTICIPATING COVERED EMPLOYEES AND OTHER UNIVERSITY EMPLOYEES

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY 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,

ENGROSSED

SB675E

2519 Chapter 4.10 of Title 23 of the Code of Virginia.

2520 "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
2521 State University.

2522 "Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29
2523 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by
2524 the Virginia Department of Human Resource Management and who are not Participating Covered
2525 Employees.

2526 "Covered Employee" means any person who is employed by the University on either a salaried or
2527 non-salaried (wage) basis.

2528 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement
2529 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that
2530 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of
2531 Subchapter 3 of the Act.

2532 "Employee" means Covered Employee unless the context clearly indicates otherwise.

2533 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
2534 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
2535 missions of the University.

2536 "Effective Date" means the effective date of the initial Management Agreement between the
2537 University and the Commonwealth.

2538 "Governing Law" means the Act and the University's Enabling Legislation.

2539 "Management Agreement" means the agreement required by subsection D of § 23- 38.88 of the Act
2540 between the University and the Commonwealth.

2541 "Participating Covered Employee" means (i) all salaried nonfaculty University employees who were
2542 employed as of the day prior to the Effective Date of the University's initial Management Agreement
2543 with the Commonwealth, and who elect pursuant to § 23- 38.115 of the Act to participate in and be
2544 governed by such human resources program or programs, plans, policies, and procedures established by
2545 Virginia Polytechnic Institute and State University, (ii) all salaried nonfaculty University employees who
2546 are employed by the University on or after the Effective Date of the initial Management Agreement
2547 between the University and the Commonwealth, (iii) all non-salaried nonfaculty University employees
2548 without regard to when they were hired, (iv) all faculty University employees without regard to when
2549 they were hired.

2550 "University" means Virginia Polytechnic Institute and State University, consisting of the University
2551 Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station
2552 Division (State Agency 229).

2553 "University employee" means a Covered Employee.

2554 "University Human Resources System" means the human resources system for University employees
2555 as provided for herein.

2556 III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

2557 The University has had human resources system autonomy through decentralization [~~and codified~~
2558 ~~autonomy~~] for its employees for some time. For example, general faculty at the University are
2559 expressly exempt from the Virginia Personnel Act. The University has had decentralization in most
2560 human resources functions and activities since the late 1980s and early 1990s, including, but not limited
2561 to, the running of payrolls; the administration of hiring, classification, and promotion practices; the
2562 administration of separate [~~health insurance and~~] retirement plans.

2563 The Act extends and reinforces the human resources autonomy previously granted to the University.
2564 This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and
2565 have in place by or after the Effective Date of its initial Management Agreement with the
2566 Commonwealth, a human resources system or systems for all University employees. On that Effective
2567 Date, and until changed by the University or unless otherwise specified in this Policy, the systems for
2568 University employees shall be the same systems applicable to those employees in effect immediately
2569 prior to that Effective Date.

2570 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

2571 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
2572 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
2573 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
2574 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
2575 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
2576 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
2577 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
2578 and procedures.

2579 V. VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY HUMAN RESOURCES 2580 SYSTEMS.

A. Adoption and Implementation of University Human Resources Systems. The President, acting through the Executive Vice President and Chief Operating Officer, is hereby authorized to adopt and implement human resources systems for University employees that implement and are consistent with the Governing Law, other applicable provisions of law, these University human resources policies, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for University personnel, unless University employees are exempted from those other human resources policies by law or policy. The University Human Resources Systems shall include a delegation of personnel authority to appropriate University officials responsible for overseeing and implementing the University 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 University commits to regularly engage employees in appropriate discussions and to receive employee input as the new University Human Resources Systems are developed. The University will regularly communicate the details of new proposals to all employees who are eligible to participate in the new University 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 University's human resources systems shall consist of the following:

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

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

3. the Human Resources System for salaried nonfaculty "Participating Covered Employees," as 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 (§ 22.-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 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 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.

2. 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.

3. 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 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. Any major change in compensation plans for Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to University employees shall be authorized and approved only by designated University officers delegated such authority by the University, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.

4. Wages. The Systems shall include policies and procedures for the authorization, computation and

payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.

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

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

7. *Other Classification and Compensation Policies and Procedures.* The Systems may include any other reasonable classification and compensation policies and procedures the President, acting through the Executive Vice President and Chief Operating Officer, 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 subsections B and C of § 23- 38.119 of the Act, the University 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 subsections B and D of § 23-38.119. 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 University employees. If, however, the University has been or is permitted by law 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. At regular intervals, the University shall engage in consultations and discussions with, and receive input from, diverse employee groups regarding human resources issues, including the University Human Resources System.

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.

2765 4. *Employee Recognition.* The Systems may provide for the use of leave awards and bonuses specific
2766 to policies and procedures for awarding, honoring, or otherwise recognizing University employees,
2767 including but not limited to those who have performed particularly meritorious service for the
2768 University, have been employed by the University for specified periods of time, or have retired from the
2769 University after lengthy service.

2770 5. *Counseling Services.* The Systems shall provide counseling services through the State's Employee
2771 Assistance Program or a University Employee Assistance Program to any eligible University employee
2772 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the
2773 circumstances under which the time necessary to participate in such counseling may be granted.

2774 6. *Unemployment Compensation.* The Systems shall ensure that University employees receive the full
2775 unemployment compensation benefits to which they are legally entitled, and that the University's liability
2776 is limited to legitimate claims for such benefits.

2777 7. *Workers' Compensation.* The Systems shall ensure that University employees have workers'
2778 compensation benefits to which they are legally entitled pursuant to the State Employees' Workers
2779 Compensation Program administered by the Department of Human Resource Management.

2780 8. *Performance Planning and Evaluation.* The Systems shall include one or more performance
2781 planning and evaluation processes for University employees that (i) establish and communicate the
2782 University's performance expectations, (ii) help develop productive working relationships, (iii) allow
2783 employees to present their views concerning their performance, (iv) identify areas for training or
2784 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify
2785 how superlative or inadequate performance shall be addressed, and (vii) ensure that all University
2786 employees are provided relevant information on the evaluation process. The Systems may include
2787 separate performance and evaluation processes for reasonably distinguishable groups of University
2788 employees. On the Effective Date of the University's initial Management Agreement with the
2789 Commonwealth, the existing merit-based performance management system for faculty shall continue,
2790 until amended by the University. On or after that Effective Date, nonfaculty salaried Participating
2791 Covered Employees may be subject to a variable merit-based performance management system.

2792 9. *Standards of Conduct and Performance.* In order to protect the well-being and rights of all
2793 employees and to ensure safe, efficient University operations and compliance with the law, the Systems
2794 shall establish rules of personal conduct and standards of acceptable work performance for University
2795 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for
2796 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or
2797 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more
2798 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action
2799 to employee conduct occurring only when employees are at work or are otherwise representing the
2800 University in an official or work-related capacity, unless otherwise specifically provided by the policies
2801 of the Systems or other applicable law. The Systems may provide for a probationary period for new and
2802 re-employed University salaried nonfaculty employees, during which period the policies for corrective
2803 discipline shall not be applicable and the employee may not use the grievance procedure set forth in the
2804 next paragraph. The Systems may include separate rules of personal conduct and standards of
2805 acceptable work performance and policies for corrective discipline for reasonably distinguishable groups
2806 of University employees.

2807 10. *Grievance Procedure.* As provided in the Governing Law, employees shall be encouraged to
2808 resolve employment-related problems and complaints informally, and shall be permitted to discuss their
2809 concerns freely and without fear of retaliation with immediate supervisors and management. In the event
2810 that such problems cannot be resolved informally, all salaried nonfaculty University employees,
2811 regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in
2812 § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of
2813 the Code of Virginia, to the extent it was applicable to their classification of employees prior to the
2814 Effective Date of the University's initial Management Agreement with the Commonwealth. On that
2815 Effective Date, and until changed by the University, the faculty grievance procedures in effect
2816 immediately prior to the Effective Date shall continue.

2817 11. *Discrimination Complaints.* If a Classified Employee believes discrimination has occurred, the
2818 Classified Employee may file a complaint with the Department of Human Resource Management, Office
2819 of Equal Employment Services, with the appropriate University office, or with the appropriate federal
2820 agencies. All Participating Covered Employees and applicants for employment after the Effective Date of
2821 the University's initial Management Agreement with the Commonwealth shall file a complaint with the
2822 appropriate University office or with the appropriate federal agencies.

2823 12. *Layoff Policy.* The Systems shall include one or more layoff policies for salaried University
2824 employees who lose their jobs for reasons other than their job performance or conduct, such as a
2825 reduction in force or reorganization at the University. These University layoff policies shall govern such
2826 issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)

notice to employees affected by a layoff, (iv) placement options within the University or its respective major divisions and within other parts of the University, (v) the preferential employment rights, if any, of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, University employees who: (i) were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of Virginia.

Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University 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 University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the University 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 University 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 University'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 University 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 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

2888 placed in their charge, work breaks, inclement weather and emergencies, and employment outside the
2889 University.

2890 E. Leave and Release Time.

2891 The Systems shall include policies and procedures regarding leave for eligible employees. The
2892 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal
2893 uses. The Systems may provide for release time for such matters as the donation of blood, participation
2894 in an employee assistance program and other appropriate employment-related matters. On or after the
2895 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is
2896 adopted by the appropriate authority, the University shall continue to provide leave and release time to
2897 Participating Covered Employees in accordance with the leave and release time policies and procedures
2898 applicable to each classification of employees prior to that Effective Date. On or after that Effective
2899 Date, the University may provide an alternative leave and release time system for salaried nonfaculty
2900 Participating Covered Employees.

2901 F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.

2902 1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and
2903 procedures to ensure that all aspects of human resources management, including the employment of
2904 University employees, meet all requirements of federal and state law, and of the relevant policies of the
2905 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

2906 2. Employment. The Systems shall include policies and procedures for the recruitment, selection and
2907 hiring of University employees that are based on merit and fitness, including where appropriate a
2908 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference
2909 checks and conviction record checks. On and after the Effective Date of its initial Management
2910 Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies
2911 through the University's job posting system, the Commonwealth's job posting system, and other external
2912 media as appropriate. The Systems shall establish designated veterans' re-employment rights in
2913 accordance with applicable law. In order to encourage employees to attain the highest level positions
2914 for which they are qualified, and to compensate employees for accepting positions of increased value
2915 and responsibility, the Systems shall include policies and procedures governing the promotion of
2916 employees, including the effect of promotion on an employee's compensation.

2917 On or after the Effective Date of the University's initial Management Agreement with the
2918 Commonwealth, all employees hired from other state agencies shall be Participating Covered
2919 Employees. University Classified Employees who change jobs within the University through a
2920 competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a
2921 Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to
2922 become a Participating Covered Employee, that decision shall be irrevocable.

2923 3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable
2924 notice, where appropriate, of a decision either by the employee or by the University to separate the
2925 employee from the University in accordance with policies governing performance, conduct, or layoff.

2926 G. Information Systems.

2927 The University shall provide an electronic file transfer of information on all salaried University
2928 employees and shall continue to provide the Employee Position Reports to meet the human resources
2929 reporting requirements specified by law or by request of the Governor or the General Assembly, unless
2930 the University is specifically exempted from those requirements. The University shall conduct
2931 assessments to demonstrate its accountability for human resources practices that comply with laws and
2932 regulations. The Department of Human Resource Management and the University have entered into a
2933 Memorandum of Understanding, attached hereto as Attachment [2 3], which may be amended from
2934 time to time by agreement of the parties, regarding the specific data and reporting requirements. The
2935 University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the
2936 Department of Human Resources Management.

2937 VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND
2938 OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.

2939 On and after the Effective Date of its initial Management Agreement with the Commonwealth,
2940 University employees shall be subject to the terms and conditions of the Act and the Management
2941 Agreement between the Commonwealth and the University. Classified Employees shall continue to be
2942 subject to the human resources policies and exceptions to those policies adopted or approved by the
2943 Department of Human Resource Management. In addition, all University employees also shall remain
2944 subject to any other human resources policies adopted by the Board of Visitors applicable to University
2945 personnel unless University employees or a subset thereof are specifically exempted from those other
2946 human resources policies either by those other policies or by this Policy.

2947

2948

2949

*Memorandum of Understanding
Between Virginia Polytechnic Institute and State University and the
Department of Human Resources Management Regarding
The Reporting of Human Resources Management Data*

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

1. This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so 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 University 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 University 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 University 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 University's compliance with relevant federal and state employment laws and regulations.

3. The University 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 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:

2987

*By:
Executive Vice President & Chief Operating Officer*

Date_____

2990

2991

Department of Human Resources Management:

2993

By:

Director, Department of Human Resource Management

Date

2996

2997

2998

2999

3000

3001

3002

3003

3004

3005

3006

3007

3008

3009

3010

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 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.

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

Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the benefits of this Policy as it is implemented by the University 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 operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the University's initial Management Agreement with the Commonwealth or that it may be granted by law in the future.

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. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

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

The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University 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, acting through the Executive Vice President and Chief Operating Officer, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing with CARS , or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) summary [~~year-end~~ 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 Department of Medical Assistance Services,~~ 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

3134 policies can be developed, approved and implemented. Such alternate policies shall include applicable
3135 accountability measures and shall be submitted to the State Comptroller for review and comment before
3136 they are implemented by the University.

3137 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

3138 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the
3139 University shall have the power and authority to manage all monies received by it. All State general
3140 funds to be allocated to the University shall remain subject to the appropriations process.

3141 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher
3142 Education for Virginia ("SCHEV") annually shall assess and certify to the Governor and General
3143 Assembly the degree to which each public institution of higher education of the Commonwealth has met
3144 the financial and administrative management and educational-related performance benchmarks called
3145 for by that subsection and approved as part of the Appropriation Act then in effect for the State goals
3146 and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to
3147 § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full
3148 fiscal year for which the financial and administrative management and educational-related performance
3149 benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for
3150 all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has
3151 been certified during the fiscal year by SCHEV as having met such institutional performance
3152 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain
3153 financial incentives, including the interest on the tuition and fees and other non-general fund
3154 Educational and General Revenues deposited into the State Treasury by the public institution of higher
3155 education.

3156 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
3157 which it has received such certification from SCHEV, the University is authorized to hold and invest
3158 tuition, Educational and General ("E&G") fees, research and sponsored program funds, auxiliary
3159 enterprise funds, and all other non-general fund revenues subject to the following requirements:

3160 i) The University shall deposit such funds in the State Treasury pursuant to the State process in
3161 place at the time of such deposit;

3162 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section
3163 IX below;

3164 iii) To be consistent with the financial incentives set forth in § 2.2-5005 of the Code of Virginia
3165 described above, the University shall not be entitled to [receive the amount of interest the State would
3166 have earned on the University's tuition and fees and other non-general fund Educational and General
3167 Revenues deposited into the State Treasury if the State had continued to hold and invest such funds
3168 itself, until the fiscal year following the fiscal year for which it has received the required certification
3169 from SCHEV. Instead, the State Comptroller and the University shall enter into an agreement by which
3170 the University shall provide the State Comptroller with its daily cash balances for tuition and fees and
3171 other non-general fund Educational and General Revenues so the State Comptroller can calculate the
3172 interest the State would have earned if it had held and invested such funds itself. The State Comptroller
3173 shall withhold such amount from the general fund appropriations payable to the University pursuant to
3174 the schedule set forth in Section IX below. If, pursuant to subsection C of § 23-9.6:1.01, the University
3175 receives the certification that it has met for a particular fiscal year the institutional performance
3176 benchmarks called for by that section and approved in the then-current Appropriation Act, the
3177 University shall receive such amount withheld for that fiscal year as its financial incentive as provided
3178 in paragraph 1 of § 2.2-5005. If public institutions of higher education of the Commonwealth are
3179 permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain
3180 or be paid the interest the State would have earned on sponsored programs and research funds, then
3181 this paragraph shall not apply to such interest on such funds, and such interest shall not be withheld
3182 from the general fund appropriation distributed to the University pursuant to the schedule set forth in
3183 Section IX below. expend the amount of interest earned on the University's tuition and fees and other
3184 non-general fund Educational and General Revenues held and invested by the University until the fiscal
3185 year following the fiscal year for which it has received the required certification from the State Council
3186 of Higher Education for Virginia. The University shall hold in escrow all interest earned on the
3187 University's tuition and fees and other non-general fund Educational and General Revenues until such
3188 time that, pursuant to subsection C of § 23-9.6:1.01, the University receives the certification that it has
3189 met for a particular year the institutional performance benchmarks called for by that section and
3190 approved in the then-current Appropriation Act. Not later than 30 days after receipt of the required
3191 State Council of Higher Education for Virginia certification (unless such 30-day period ends before July
3192 1 in which case the relevant dates shall be no earlier than July 1 but no later than July 3), the
3193 Commonwealth shall make a non-general fund appropriation equivalent to the amount deposited in the
3194 escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the
3195 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 University shall pay to the Commonwealth, not later than 30 days after notification from the State Council of Higher Education for Virginia, the balance in the escrow account as of June 30 of that year.]

[~~(iv)~~ 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 certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.

[~~v~~ vi)] On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all cash balances held by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues. [~~vi~~ vii)] The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the University as specified in Section IX below.

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

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

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

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

The President, through the Executive Vice President and Chief Operating Officer, 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 University 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 University 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 University 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 University accounts receivable such as reporting delinquent accounts to

3257 credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In
3258 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's
3259 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and
3260 the State Comptroller to implement such Programs, and shall provide a quarterly summary report of
3261 receivables to the Department of Accounts in accordance with the reporting procedures established
3262 pursuant to the Virginia Debt Collection Act.

3263 IX. DISBURSEMENT MANAGEMENT.

3264 The President, acting through the Executive Vice President and Chief Operating Officer, shall
3265 continue to be authorized to create and implement any and all disbursement policies as part of a system
3266 for the management of University financial resources. The disbursement management policies shall
3267 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in
3268 the execution of the University's operations. These policies also shall continue to address the timing of
3269 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the
3270 appropriateness of certain goods or services relative to the University's mission, including travel-related
3271 disbursements. Further, the University's disbursement policy shall continue to provide for the
3272 mechanisms by which payments are made including the use of charge cards, warrants, and electronic
3273 payments. Since the University no longer will interface to the CARS system or any replacement for the
3274 CARS system for disbursements, the University shall establish its own mechanisms for electronic
3275 payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to
3276 the Commonwealth's Debt Set-Off Collection Programs.

3277 Beginning with the fiscal year after the first fiscal year for which it first receives the required
3278 certification from SCHEV, the University may draw down its general fund appropriations (subject to
3279 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.
3280 Such funds shall be available to the University for disbursement as provided in the then-current rules of
3281 the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in
3282 accordance with the following schedule: [~~i) the University may draw down one-twelfth (1/12) of its~~
3283 ~~annual general fund appropriation for Educational and General programs on the first day of each~~
3284 ~~month (less the interest retention specified in Section VII above);~~ i) the University may draw down
3285 one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs
3286 on the first and fifteenth days of each month] and up to 50 percent of its annual general fund
3287 appropriation for Student Financial Assistance on or after September 1 of each year with the remaining
3288 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;

3289 ii) the University may draw down the sum of all tuition and E&G fees and all other nongeneral
3290 revenues deposited to the State Treasury each day on the same business day they were deposited; and

3291 iii) the University anticipates that expenditures could exceed available revenues from time to time
3292 during the year if the above disbursement schedule is used. When the University projects a cash deficit
3293 is likely in activities supported by general fund appropriations, the University may make a request to the
3294 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury,
3295 in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

3296 These disbursement policies shall authorize the President, acting through the Executive Vice
3297 President and Chief Operating Officer, to independently select, engage, and contract for such
3298 consultants, accountants, and financial experts, and other such providers of expert advice and
3299 consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may
3300 be necessary or desirable in his or her discretion. The policies also shall continue to include the ability
3301 to locally manage and administer the Commonwealth's credit card and cost recovery programs related
3302 to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those
3303 programs, provided that the University shall submit the credit card and cost recovery aspects of its
3304 financial and operations policies to the State Comptroller for review and comment prior to implementing
3305 those aspects of those policies. The disbursement policies shall ensure that adequate risk management
3306 and internal control procedures shall be maintained over previously decentralized processes for public
3307 records, payroll, and non-payroll disbursements. The University shall continue to provide summary
3308 quarterly prompt payment reports to the Department of Accounts in accordance with the reporting
3309 procedures established pursuant to the Prompt Payment Act.

3310 The University's disbursement policies shall be guided by the principles of the Commonwealth's
3311 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the
3312 Effective Date of its initial Management Agreement with the Commonwealth, the University shall
3313 continue to follow the Commonwealth's disbursement policies until such time as specific alternative
3314 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the
3315 State Comptroller for review and comment prior to their implementation by the University.

3316 X. DEBT MANAGEMENT.

3317 The President, acting through the Executive Vice President and Chief Operating Officer, shall
3318 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.

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

XI. INVESTMENT POLICY.

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

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

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

XII. INSURANCE AND RISK MANAGEMENT.

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 insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the University is then participating, to enable the Commonwealth 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 the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal [, as determined by the Commonwealth's actuaries] . Such payment shall be made in a manner agreeable to both the University and the Commonwealth.

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

CHAPTER 2.

MANAGEMENT AGREEMENT BY AND BETWEEN THE COMMONWEALTH OF VIRGINIA

3380 AND

3381 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

3382 This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the
3383 Commonwealth of Virginia (hereafter, the "Commonwealth") and The College of William and Mary in
3384 Virginia (hereafter, "the College") provides as follows:

3385 RECITALS

3386 WHEREAS the College has satisfied the conditions precedent set forth in subsections A and B of
3387 § 23-38.97 of the Code of Virginia to become a public institution of higher education of the
3388 Commonwealth governed by Subchapter 3 (§ 23-38.91 et seq.) of the Restructured Higher Education
3389 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code
3390 of Virginia ("Subchapter 3" and the "Act," respectively), as evidenced by:

3391 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the College
3392 held on April 22, 2005, indicate that an absolute two-thirds or more of the members voted to approve
3393 the resolution required by subsection A 1 of § 23-38.97 of the Act;

3394 2. Written Application to the Governor. The College has submitted to the Governor a written
3395 Application, dated November 2, 2005, with copies to the Chairmen of the House Committee on
3396 Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate
3397 Committee on Education and Health, expressing the sense of its Board of Visitors that the College is
3398 qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the College
3399 has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and

3400 3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act the Governor
3401 has found that the College has fulfilled the requirements of subsection A 2 of § 23-38.97, and therefore
3402 has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the
3403 Commonwealth with the College; and

3404 WHEREAS, the College is therefore authorized to enter into this Management Agreement as provided
3405 in subsection D of § 23-38.88 and Subchapter 3 of the Act.

3406 AGREEMENT

3407 NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education
3408 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code
3409 of Virginia, and in consideration of the foregoing premises, the Commonwealth and the College do now
3410 agree as follows:

3411 ARTICLE 1. DEFINITIONS.

3412 As used in this Agreement, the following terms have the following meanings, unless the context
3413 requires otherwise:

3414 "Act" means the Restructured Higher Education Administrative and Financial Operations Act,
3415 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

3416 "Agreement" means "Management Agreement."

3417 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William
3418 and Mary in Virginia and the Virginia Institute of Marine Science.

3419 "College" means the College of William and Mary in Virginia (state agency 204) and the Virginia
3420 Institute of Marine Science (state agency 268).

3421 "Covered Employee" means any person who is employed by the College on either a salaried or wage
3422 basis.

3423 "Covered Institution" means, on and after the effective date of its initial management agreement with
3424 the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has
3425 entered into a management agreement with the Commonwealth to be governed by and in accordance
3426 with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.

3427 "Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
3428 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
3429 missions of the individual public institutions of higher education of the Commonwealth.

3430 "Management Agreement" means this agreement between the Commonwealth of Virginia and the
3431 College as required by subsection D of § 23-38.88 and Subchapter 3 of the Act.

3432 "Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the
3433 College.

3434 "Public institution of higher education" means those two-year and four-year institutions enumerated
3435 in § 23-14 of the Code of Virginia.

3436 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

3437 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability. Subchapter 3 of the
3438 Act provides that, upon the execution of, and as of the effective date for, this Management Agreement,
3439 the College shall become a Covered Institution entitled to be granted by the Commonwealth and to
3440 exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in
3441 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 policies 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 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.

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

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 Management Agreement and the policies adopted by it and attached as Exhibits G through L. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits G through L, to a person or persons within the College.

SECTION 2.1.3. Reimbursement by the College of Certain Costs. [Pursuant to subsection D(2)(c) of § 23-38.88 of the Act, the College agrees to reimburse the Commonwealth an amount mutually agreed upon with the Commonwealth for any additional costs to the Commonwealth in providing health or other group insurance benefits to employees, and in undertaking any risk management program, that are attributable to the College's exercise of any restructured financial or operational authority set forth in Subchapter 3 of the Act and included in this Management Agreement or the policies adopted by its Board of Visitors and attached hereto as Exhibits G through L. By July 1 of each odd-numbered year, the College 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 College through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the College 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 College proceeds to withdraw from such health or other group insurance or risk management program, the College 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, the College 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

3503 Administration who participated in the development of this Management Agreement. The Executive
3504 Director of the Plan has provided to the College and the Commonwealth the Plan's assumptions
3505 underlying the contract pricing of the program.

3506 SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to
3507 § 23-38.110 of the Act and subject to the provisions of this Management Agreement, the College may be
3508 exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43 (§ 2.2-4300 et
3509 seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA
3510 must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors
3511 shall adopt and comply with procurement policies that are based upon competitive principles and seek
3512 competition to the maximum practical degree. The Policy Governing the Procurement of Goods,
3513 Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules
3514 Governing Procurement of Goods, Services, Insurance, and Construction (the "Procurement Rules")
3515 attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA
3516 required by subsections A and B of § 23-38.110 of the Act.

3517 Subsection D of § 23-38.110 of the Act requires that the College identify the public, educational, and
3518 operational interests served by any procurement rule or rules that deviate from those in the VPPA. The
3519 adopted Board of Visitors policy on procurement and the Procurement Rules provide the College with
3520 the autonomy to administer its procurement process while fully adhering to the principle that
3521 competition should be sought to the maximum extent feasible. This autonomy will better position the
3522 College to support the requirements of its growing teaching, research and outreach missions. Greater
3523 autonomy in procurement will improve internal capacity to respond quickly to emergent material and
3524 service issues and, therefore, enable the College to be more efficient and effective in meeting the
3525 Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced.
3526 Taken collectively, the College's procurement policies and rules that differ from those required by the
3527 VPPA will enhance procurement "best practices" as they currently are being observed within the higher
3528 education community nationally. Further, these changes will provide efficiencies to both the College
3529 and public sector suppliers.

3530 SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that
3531 a Covered Institution include in its management agreement with the Commonwealth the quantification of
3532 cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter
3533 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been
3534 implemented by the College, the parties agree that the College is not in a position to quantify any such
3535 cost savings at this time, although the College expects that there will be cost savings resulting from the
3536 additional authority granted to the College pursuant to Subchapter 3 of the Act and that such cost
3537 savings will be part of the determinations made during the reviews, assessments, and audits to be
3538 conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative
3539 Audit and Review Commission, and the State Council of Higher Education for Virginia, and as
3540 otherwise described in Section 2.1.1 above.

3541 SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the College shall
3542 continue to fully participate in, and receive funding support from the many and varied programs
3543 established now or in the future by the Commonwealth to provide support for Virginia's public
3544 institutions of higher education and for Virginians attending such institutions, including but not limited
3545 to: the state capital outlay and bond financing initiatives undertaken from time to time by the
3546 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq.
3547 of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the
3548 Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student
3549 financial assistance programs; and other statewide programs or initiatives that exist, or may be
3550 established, in support of the Commonwealth's higher education institutions, programs, or activities.

3551 SECTION 2.1.8. Implied Authority. Pursuant to subsection D 1 of § 23-38.88 of the Act, the only
3552 implied authority granted to the College by this Management Agreement is that implied authority that is
3553 actually necessary to carry out the expressed grant of financial or operational authority contained in
3554 this Agreement or in the policies adopted by the College's Board of Visitors and attached hereto as
3555 Exhibits G through L.

3556 SECTION 2.1.9. Exercise of Authority. The College and the Commonwealth acknowledge and agree
3557 that the execution of this Management Agreement constitutes the conclusion of a process that, as of the
3558 effective date of this Agreement, confers upon the College the enhanced authority and operating
3559 flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act.
3560 Therefore, without any further conditions or requirements, the College shall, on and after the effective
3561 date of this Management Agreement, be authorized to exercise the authority conferred upon it by this
3562 Management Agreement, the policies adopted by its Board of Visitors attached hereto as Exhibits G
3563 through L, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the
3564 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 College, including the Virginia Institute of Marine Science, commits to match from institutional funds, on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.

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

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

SECTION 2.2.2. *Student Enrollment, Tuition, and Financial Aid.* As required by § 23-9.2:3.02 of the Code of Virginia, the College, 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 College'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 College 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 College'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 College's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the College'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 College to include in this Management Agreement the College'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 College's commitment in this regard is clear.

The College of William and Mary, under the leadership of its new president, has set as a goal

3626 increasing the economic and social diversity of the student body at the College. The College is
3627 absolutely committed to assuring access to any qualified and admitted Virginian regardless of family
3628 income. The primary initiative in this area is Gateway William and Mary [, which shall be
3629 substantially as described in the remainder of this Section 2.2.2, as may be amended from time to time
3630 by the Board of Visitors of the College and reported to the Secretaries of Finance and Education and
3631 the Chairmen of Senate Committee on Finance and the House Committee on Appropriations] .

3632 At the present time, any needy Virginian at the College receives a combination of grants and loans
3633 so that his or her indebtedness will not exceed one year's cost of education. This is as generous as any
3634 other public institution in the state or region. Nonetheless, this means that many needy Virginians,
3635 including those with low family incomes, will graduate with more than \$16,000 in indebtedness. This
3636 burdensome level of debt may discourage students from lower SES groups from applying to or accepting
3637 admission from the College. And, if they do attend, their legitimate concern with respect to debt
3638 repayment may discourage them from some career choices like K-12 education or from going on to
3639 graduate or professional school for fear of adding even more to their personal indebtedness. Hence,
3640 over the period of the six-year plan, the College of William and Mary is committed to seeking, from all
3641 sources - state-appropriated scholarship funds, federal, and private support — sufficient funds to assure
3642 that 1) we meet 100% of financial need for in-state undergraduates and 2) any student whose family's
3643 annual income is less than \$40,000 can spend four years at the College and graduate debt-free. The
3644 Gateway William and Mary initiative is one of the highest priorities for our new president. In addition,
3645 both through our goal to increase the numbers of VCCS graduates who transfer to the College [~~(see~~
3646 ~~Goal 6 below)~~] and aggressive efforts to recruit in-state students from lower SES groups, we hope to
3647 double the number of students who would receive assistance through the Gateway initiative from 280
3648 students to 560 students by the end of the six-year planning period.

3649 As noted, we will continue our commitment to providing additional financial aid through grants and
3650 loans to those Virginians whose families are not in the lower SES groups, but who still have
3651 demonstrable need. Currently approximately 900 in-state undergraduate students receive need-based
3652 aid. The College commits to meeting 100% of the need for these students consistent with the federal
3653 definition of unmet needs over the six year planning period. In addition, as tuition and fees increase
3654 over the period of the six-year plan, we will readjust the level of financial aid for all students to assure
3655 that insufficiency of family resources will not be a barrier to attending the College.

3656 The Commonwealth and the College agree that this commitment meets the requirements of subsection
3657 B of § 23-38.104 of the Act.

3658 SECTION 2.3. Authority Granted to the Virginia Institute of Marine Science. The Virginia Institute
3659 of Marine Science (hereafter, "the Institute") shall receive the benefits of the additional financial and
3660 operational authority granted by this Management Agreement as it and the policies adopted by the
3661 Board of Visitors attached as Exhibits G through L are implemented by the College on behalf of the
3662 Institute, but the Institute shall not receive any additional independent financial or operational authority
3663 as a result of this Management Agreement or the attached Board of Visitors policies beyond the
3664 independent financial and operational authority that it had prior to the effective date of this
3665 Management Agreement or that it may be granted by law in the future.

3666 SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, the College shall
3667 be governed and administered in the manner provided not only in this Management Agreement, but also
3668 as provided in the Appropriation Act then in effect and the College's Enabling Legislation.

3669 SECTION 2.4.1. The Appropriation Act. The Commonwealth and the College agree that, pursuant
3670 to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is
3671 a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act,
3672 or this Management Agreement, or the Board of Visitors policies attached to this Management
3673 Agreement as Exhibits G through L, the provisions of the Appropriation Act shall control, and shall
3674 continue to control unless provided otherwise by law.

3675 SECTION 2.4.2. The College's Enabling Legislation. As provided in subsection C of § 23-38.91 of
3676 the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the College's
3677 Enabling Legislation, the Enabling Legislation shall control.

3678 SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § 23-38.92 of the
3679 Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of
3680 this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management,
3681 supervision, regulation, and control of public institutions of higher education shall be applicable to the
3682 College as provided by the express terms of this Management Agreement. As further provided in
3683 subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any
3684 provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this
3685 Management Agreement shall control.

3686 SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of
3687 § 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 substantial and material change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through L 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 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] 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

3749 Agreement.

3750 ARTICLE 4. GENERAL PROVISIONS.

3751 SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied,
3752 shall be construed as conferring any third-party beneficiary status on any person or entity.

3753 SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § 23-38.88 of the Act, the College
3754 and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to
3755 the same sovereign immunity to which they would be entitled if the College were not governed by the
3756 Act; provided that the Virginia Tort Claims Act, § 8.01-195.1 et seq. of the Code of Virginia, and its
3757 limitations on recoveries shall remain applicable with respect to the College.

3758 SECTION 4.3. Term of Agreement [; Authority to Renew.— This Management Agreement shall
3759 remain in effect for a period of three years from its effective date.— Pursuant to subsection D 3 of
3760 § 23-38.88 of the Act, the Commonwealth and the College may by mutual agreement renew this
3761 Agreement for successive five-year periods, or may enter into a new management agreement.— If after its
3762 initial three-year term, or a successive five-year term if it is renewed by the parties, this Management
3763 Agreement is not renewed or a new agreement executed prior to the expiration of the three-year or
3764 five-year term, as applicable, this Management Agreement shall remain in effect on a provisional basis
3765 for a period of one year.— If, after the expiration of the provisional one-year period, this Management
3766 Agreement has not been renewed or a new agreement executed, the College shall no longer be granted
3767 any of the financial or operational authority set forth in Subchapter 3 of the Act, unless and until such
3768 time as a new management agreement is entered into between the College and the Commonwealth. .
3769 This Management Agreement shall expire at midnight on June 30, 2010.]

3770 WHEREFORE, the foregoing Management Agreement has been executed [by the undersigned as of
3771 this 15th day of November, 2005, and shall become effective on the effective date of the Appropriation
3772 Act or amendments to an Appropriation Act enacted by the General Assembly containing a
3773 recommendation for its approval as of this 15th day of November, 2005, and shall become effective on
3774 the effective date of legislation enacted into law providing for the terms of such Agreement] .

3775

3776

3777

3778

3779

3780

3781

3782

3783

3784

3785

3786

3787

3788

3789

3790

3791

3792

3793

3794

3795

3796

3797

3798

3799

3800

3801

3802

3803

3804

3805

3806

3807

3808

3809

3810

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.

3796 The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter
3797 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the
3798 College of William & Mary in Virginia may be delegated the authority to establish its own system for
3799 undertaking the implementation of its capital projects. In general, status as a Covered Institution is
3800 designed to replace the post-authorization system of reviews, approvals, policies and procedures carried
3801 out by a variety of central State agencies, and also the traditional pre-authorization approval process
3802 for projects funded entirely with non-general funds and without any proceeds from State Tax Supported
3803 Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be
3804 governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together
3805 with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the
3806 Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods,
3807 Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the
3808 adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state
3809 general fund appropriation, State Tax Supported Debt, or funding from other sources.

3810 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 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.

III. SCOPE OF POLICY.

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

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

IV. 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.

V. CAPITAL PROGRAM.

The President shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the College for a given period of time consistent with the College's published Master Plan. This 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

3872 requirements for capital plans. The Board may approve amendments to the program for Major Capital
3873 Projects annually or more often if circumstances warrant.

3874 It shall be College policy that each capital project program shall meet the College's mission and
3875 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College
3876 policy that each capital project shall be **of a size and scope** to provide for the defined program needs,
3877 designed in accordance with all applicable building codes and handicapped accessibility standards as
3878 well as the College's design guidelines and standards, and costed to reflect current costs and escalated
3879 to the mid-point of anticipated construction.

3880 VI. AUTHORIZATION OF CAPITAL PROJECTS

3881 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
3882 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for
3883 approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that
3884 are to be funded entirely or in part by a general fund appropriation of the General Assembly or
3885 proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those
3886 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the
3887 State's process for capital budget requests.

3888 It shall be the policy of the College that the implementation of capital projects shall be carried out
3889 so that the capital project as completed is the capital project approved by the Board for Major Capital
3890 Projects and according to the procedures adopted by the President, acting through his designee, for all
3891 other capital projects. The President shall ensure strict adherence to this requirement.

3892 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond
3893 the plans and justifications that were the basis for the capital project's approval, either before or during
3894 construction, unless approved in advance as described above. Minor changes shall be permissible if
3895 they are determined by the President, acting through his designee, to be justified.

3896 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must
3897 include a statement of urgency if not part of the approved Major Capital Project program.

3898 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 3899 SERVICES.

3900 It shall be the policy of the College that procurements shall result in the purchase of high quality
3901 services and construction at reasonable prices and shall be consistent with the Policy Governing the
3902 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials
3903 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and
3904 Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed
3905 to:

3906 Seeking competition to the maximum practical degree, taking into account the size of the anticipated
3907 procurement, the term of the resulting contract and the likely extent of competition;

3908 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the
3909 appearance of any impropriety prohibited by State law or College policy;

3910 Making procurement rules clear in advance of any competition;

3911 Providing access to the College's business to all qualified vendors, firms and contractors, with no
3912 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage
3913 in cooperative procurements and to meet special needs of the College;

3914 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
3915 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
3916 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
3917 necessary to the contractor's normal operations;

3918 Providing for a non-discriminatory procurement process, and including appropriate and lawful
3919 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small
3920 businesses and to promote and encourage a diversity of suppliers.

3921 The President, acting through his designee, is authorized to develop implementing procedures for the
3922 procurement of Capital Professional Services and construction services at the College. The procedures
3923 shall implement this Policy and provide for:

3924 A system of competitive negotiation for Capital Professional Services, including a procedure for
3925 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,
3926 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of
3927 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

3928 A prequalification procedure for contractors or products;

3929 A procedure for special construction contracting methods, including but not limited to design-build
3930 and construction management contracts; and

3931 A prompt payment procedure.

3932 The College also may enter into cooperative arrangements with other private or public health or
3933 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~~ :

A. ~~Maintaining~~ 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 [÷ ~~or~~ :

B. ~~Using the services of the Department of General Services, Division of Engineering and Buildings, to perform the building code review duties as described above. .]~~

IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the College 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 College 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 College to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The College 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 College 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 his designee, 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 College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College 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,

3995 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following
3996 specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

3997 A. Environmental and Land Use Considerations.

3998 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition.
3999 Such cooperation shall include but not be limited to furnishing any information that the locality may
4000 reasonably request and reviewing any requests by the locality with regard to any such acquisition. The
4001 College shall consider the zoning and comprehensive plan designation by the locality of the building or
4002 land and surrounding parcels, as well as any designation by State or federal agencies of historically or
4003 archeologically significant areas on the land. Nothing herein shall be construed as requiring the
4004 College to comply with local zoning laws and ordinances.

4005 B. Infrastructure and Site Condition.

4006 The President, acting through his designee, shall ensure that, in the case of capital projects involving
4007 the acquisition of buildings or land, the project management systems implemented under Section XIII
4008 below provide for a review of the following matters prior to acquisition of the building or land: that any
4009 land can be developed for its intended purpose without extraordinary cost; that an environmental
4010 engineer has been engaged by the College to provide an assessment of any environmental conditions on
4011 the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the
4012 building or land; that utilities and other services to the land are adequate or can reasonably be
4013 provided or have been provided in the case of building acquisitions; and that the condition and grade of
4014 the soils have been examined to determine if any conditions exist that would require extraordinary site
4015 work or foundation systems.

4016 C. Title and Survey.

4017 A survey shall be prepared for any real property acquired, and an examination of title to the real
4018 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title
4019 insurance shall be procured from a title insurance company authorized to do business in the
4020 Commonwealth. Based upon the survey and title examination or report, the President, acting through
4021 his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed
4022 to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements
4023 or other matters that may have a significant adverse effect upon the College's ability to own, occupy,
4024 convey or develop the real property.

4025 D. Appraisal.

4026 An appraisal shall be conducted of the real property to be acquired to determine its fair market
4027 value and the consistency of the fair market value with the price agreed upon by the College.

4028 XII. BUILDING OR LAND DISPOSITIONS.

4029 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or
4030 buildings, the acquisition or construction of which was funded entirely or in part by a general fund
4031 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both
4032 Board of Visitors approval and other approvals in accordance with general law applicable to
4033 State-owned property and with the College's Enabling Legislation.

4034 XIII. PROJECT MANAGEMENT SYSTEMS.

4035 The President, acting through his designee, shall implement one or more systems for the management
4036 of capital projects for the College. The systems may include the delegation of project management
4037 authority to appropriate College officials, including a grant of authority to such officials to engage in
4038 further delegation of authority as the President deems appropriate.

4039 The project management systems for capital projects shall be designed to ensure that such projects
4040 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely
4041 related subjects such as selection of architects or policies applicable to College buildings and grounds.

4042 The project management systems may include one or more reporting systems applicable to capital
4043 projects whereby College officials responsible for the management of such projects provide appropriate
4044 and timely reports to the President on the status of such projects during construction.

4045 XIV. REPORTING REQUIREMENTS.

4046 In addition to complying with any internal reporting systems contained in the College's project
4047 management systems, as described in Section XIII above, the College shall comply with State reporting
4048 requirements for those Major Capital Projects funded entirely or in part by a general fund
4049 appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project
4050 constructs improvements on land, or renovates property, that originally was acquired or constructed in
4051 whole or in part with a general fund appropriation for that purpose or proceeds from State Tax
4052 Supported Debt, and such improvements or renovations are undertaken entirely with funds not
4053 appropriated by the General Assembly and, if the cost of such improvements or renovations is
4054 reasonably expected to exceed two million dollars, the decision to undertake such improvements or
4055 renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine,
4056 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 [~~property, both real and personal~~ 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 and the College'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 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.

"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 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 College.

"Income Lease" means an Operating Lease of real property under the control of the College 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.

III. SCOPE OF POLICY.

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

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

ENGROSSED

SB675E

4118 *The Board of Visitors of the College shall at all times be fully and ultimately accountable for the*
4119 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*
4120 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*
4121 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*
4122 *the duties and responsibilities set forth in this Policy to a person or persons within the College, who,*
4123 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*
4124 *implementation of those duties and responsibilities pursuant to the College's usual delegation policies*
4125 *and procedures.*

4126 **V. REQUIREMENTS FOR LEASES.**

4127 **A. Factors to Be Considered When Entering into Leases.**

4128 *All Leases shall be for a purpose consistent with the mission of the College. The decision to enter*
4129 *into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy,*
4130 *consideration of all costs of occupancy, and a determination that the use of the property to be leased is*
4131 *necessary and is efficiently planned. Leases shall also conform to the space planning procedures that*
4132 *may be adopted by the President, acting through his designee, to ensure that the plan for the space to*
4133 *be leased is consistent with the purpose for which the space is intended.*

4134 **B. Competition to Be Sought to Maximum Practicable Degree.**

4135 *Competition shall be sought to the maximum practicable degree for all Leases. The President, acting*
4136 *through his designee, is authorized to ensure that Leases are procured through competition to the*
4137 *maximum degree practicable and to determine when, under guidelines that may be developed and*
4138 *adopted by the President, acting through his designee, it is impractical to procure Leases through*
4139 *competition.*

4140 **C. Approval of Form of Lease Required.**

4141 *The form of Leases entered into by the College shall be approved by the College's legal counsel.*

4142 **D. Execution of Leases.**

4143 *All Leases entered into by the College shall be executed only by those College officers or persons*
4144 *authorized by the President or as may subsequently be authorized by the Board of Visitors, and subject*
4145 *to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the*
4146 *College's Policy Governing Capital Projects adopted by the Board as part of the Management*
4147 *Agreement between the Commonwealth and the College, no other College approval shall be required for*
4148 *leases or leasing, nor state approval required except in the case of leases of real property as may be*
4149 *governed by general state law in accordance with § 23-38.109 and § 23-38.112 of the Act.*

4150 **E. Capital Leases.**

4151 *The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization*
4152 *process included in the Policy Governing Capital Projects adopted by the Board as part of the*
4153 *Management Agreement between the Commonwealth and the College.*

4154 **F. Compliance with Applicable Law.**

4155 *All Leases of real property by the College shall be consistent with any requirements of law that are*
4156 *contained in the Act or are otherwise applicable.*

4157 **G. Certification of Occupancy.**

4158 *All real property covered by an Expense Lease or leased by the College under a Capital Lease shall*
4159 *be certified for occupancy by the appropriate public body or building official.*

4160
4161 **EXHIBIT I**
4162
4163 **MANAGEMENT AGREEMENT**
4164 **BETWEEN**
4165 **THE COMMONWEALTH OF VIRGINIA**
4166 **AND**
4167 **THE COLLEGE OF WILLIAM & MARY IN VIRGINIA**
4168 **PURSUANT TO**
4169 **THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT**
4170 **OF 2005**

4171
4172
4173 **POLICY GOVERNING**
4174 **INFORMATION TECHNOLOGY**
4175

4176
4177 **THE RECTOR AND VISITORS OF**
4178 **THE COLLEGE OF WILLIAM & MARY IN VIRGINIA**
4179 **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

4241 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
4242 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
4243 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
4244 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
4245 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
4246 and procedures.

4247 *B. Strategic Planning.*

4248 The President shall be responsible for overall IT strategic planning at the College, which shall be
4249 linked to and in support of the College's overall strategic plan.

4250 At least 45 days prior to each fiscal year, the President shall make available the College's IT
4251 strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to
4252 the consistency of the College's plan with the intent of the currently published overall five-year IT
4253 strategic plan for the Commonwealth developed by the State CIO pursuant to § 2.2-2007 of the Code of
4254 Virginia and into which the College's plan is to be incorporated.

4255 *C. Expenditure Reporting and Budgeting .*

4256 The President shall approve and be responsible for overall IT budgeting and investments at the
4257 College. The College's IT budget and investments shall be linked to and in support of the College's IT
4258 strategic plan, and shall be consistent with general College policies, the Board-approved annual
4259 operating budget, and other Board approvals for certain procurements.

4260 By October 1 of each year, the President shall make available to the State CIO and the Information
4261 Technology Investment Board a report on the previous fiscal year's IT expenditures.

4262 The College shall be specifically exempt from:

4263 Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget
4264 requests) as it currently exists and from time to time may be amended;

4265 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as
4266 they currently exist and from time to time may be amended; and

4267 any other substantially similar provision of the Code of Virginia governing IT expenditure reporting
4268 and budgeting, as it currently exists and from time to time may be amended.

4269 *D. Project Management.*

4270 Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies,
4271 standards, and guidelines developed by the Commonwealth or those based upon industry best practices
4272 for project management as defined by leading IT consulting firms, leading software development firms,
4273 or a nationally-recognized project management association, appropriately tailored to the specific
4274 circumstances of the College. Copies of the Board's policies, standards, and guidelines shall be made
4275 available to the Information Technology Investment Board.

4276 The President, acting through his designee, shall oversee the management of all College IT projects.
4277 IT projects may include, but are not limited to, upgrades to network infrastructure, provision of
4278 technology to support research, database development, implementation of new applications, and
4279 development of IT services for students, faculty, staff, and patients. Day-to-day management of projects
4280 shall be the responsibility of appointed project directors and shall be in accord with the project
4281 management policies, standards, and guidelines adopted by the Board, as amended and revised from
4282 time to time.

4283 On a quarterly basis, the President, acting through his designee, shall report to the Information
4284 Technology Investment Board on the budget, schedule, and overall status of the College's major IT
4285 projects. This requirement shall not apply to research projects, research initiatives, or instructional
4286 programs.

4287 The President shall be responsible for decisions to substantially alter a project's scope, budget, or
4288 schedule after initial approval.

4289 The College shall be specifically exempt from:

4290 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project
4291 management) as it currently exists and from time to time may be amended;

4292 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management)
4293 as they currently exist and from time to time may be amended; and

4294 any other substantially similar provision of the Code of Virginia governing IT project management,
4295 as it currently exists or from time to time may be amended.

4296 The State CIO and the Information Technology Investment Board shall continue to have the authority
4297 regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of
4298 § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall
4299 continue to provide the College with reasonable notice of, and a reasonable opportunity to correct, any
4300 identified problems before a project is terminated.

4301 *E. Infrastructure, Architecture, Ongoing Operations, and Security.*

4302 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 I, 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

4364 requires otherwise:

4365 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
4366 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

4367 "Agreement" means "Management Agreement".

4368 "Board of Visitors" means the Rector and Visitors of the College of William & Mary in Virginia.

4369 "College" means the College of William & Mary in Virginia, state agency 204, and the Virginia
4370 Institute of Marine Science, state agency 268.

4371 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
4372 public institution of higher education of the Commonwealth of Virginia that has entered into a
4373 Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
4374 the Act.

4375 "Effective Date" means the effective date of the Management Agreement.

4376 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
4377 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
4378 missions of the individual public institutions of higher education of the Commonwealth.

4379 "Goods" means all material, equipment, supplies, and printing, including information technology and
4380 telecommunications goods such as automated data processing hardware and software.

4381 "Management Agreement" means the agreement required by subsection D of § 23-38.88 between the
4382 Commonwealth of Virginia and the College of William & Mary in Virginia.

4383 "Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction"
4384 attached to this Policy as Attachment 1.

4385 "Services" as used in this Policy means any work performed by an independent contractor wherein
4386 the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of
4387 equipment, materials and supplies, and shall include both professional services, which include the
4388 practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and
4389 nonprofessional services, which include any service not specifically identified as professional services.

4390 "Surplus materials" means personal property including, but not limited to, materials, supplies,
4391 equipment and recyclable items, that are determined to be surplus by the College.

4392 III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

4393 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
4394 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
4395 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
4396 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
4397 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
4398 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
4399 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
4400 and procedures.

4401 IV. GENERAL PROVISIONS.

4402 A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement 4403 Policies.

4404 The College has had decentralization and pilot program autonomy in many procurement functions
4405 and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy
4406 previously granted to the College in Item 330 E of the 1994 Appropriation Act. This Policy therefore is
4407 adopted by the Board of Visitors to enable the College to develop a procurement system, as well as a
4408 surplus materials disposition system. Any College electronic procurement system shall integrate or
4409 interface with the Commonwealth's electronic procurement system.

4410 This Policy shall be effective on the Effective Date of the College's initial Management Agreement
4411 with the Commonwealth. The implementing policies and procedures adopted by the President to
4412 implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors
4413 affecting procurements at the College, including policies regarding the nature and amounts of
4414 procurements that may be undertaken without the approval of the Board of Visitors, or of the President.

4415 B. Scope and Purpose of College Procurement Policies.

4416 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be
4417 the policy of the College that procurements conducted by the College result in the purchase of high
4418 quality goods and services at reasonable prices, and that the College be free, to the maximum extent
4419 permitted by law and this Policy, from constraining policies that hinder the ability of the College to do
4420 business in a competitive environment. This Policy, together with the Rules Governing Procurement of
4421 Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all
4422 procurements undertaken by the College, regardless of the source of funds.

4423 C. Collaboration, Communication, and Cooperation with the Commonwealth.

4424 The College is committed to developing, maintaining, and sustaining collaboration, communication,
4425 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 College 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 College 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 College:

i) may purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the College 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

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 College 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 College'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 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 College capital projects and construction-related professional services (§ 2.2-1132).

V. COLLEGE PROCUREMENT POLICIES.

A. General Competitive Principles.

In connection with College procurements and the processes leading to award of contracts for goods, services, insurance, and construction, 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 an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;

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;

ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and

providing for the free exchange of information between the College, 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

4487 § 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia
4488 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.

4489 C. Cooperative Procurements and Alliances.

4490 In circumstances where the College determines and documents that statewide contracts for goods and
4491 services, including information technology and telecommunications goods and services, do not provide
4492 goods and services to the College that meet its business goals and objectives, the College is authorized
4493 to participate in cooperative procurements with other public or private organizations or entities,
4494 including other educational institutions, public-private partnerships, public bodies, charitable
4495 organizations, health care provider alliances and purchasing organizations, so long as the resulting
4496 contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing
4497 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1
4498 and the purposes of this Policy are furthered. In the event the College engages in a cooperative
4499 contract with a private organization or public-private partnership and the contract was not competitively
4500 procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods,
4501 Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by
4502 other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the
4503 above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's
4504 electronic procurement system, including the requirement for payment of applicable fees. By October 1
4505 of each year, the President, or his designee, shall make available to the Secretaries of Administration
4506 and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts
4507 a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.

4508 D. Training; Ethics in Contracting.

4509 The President, acting through his designee, shall take all necessary and reasonable steps to assure
4510 (i) that all College officials responsible for and engaged in procurements authorized by the Act and this
4511 Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public
4512 Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter
4513 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any
4514 procedures adopted by the President to implement this Policy are responsible for and engaged in such
4515 procurements, and (iii) that compliance with the Act and this Policy are achieved.

4516 The College shall maintain an ongoing program to provide professional development opportunities to
4517 its buying staff and to provide methods training to internal staff who are engaged in placing
4518 decentralized small purchase transactions.

4519 E. Ethics and College Procurements.

4520 In implementing the authority conferred by this Policy, the personnel administering any procurement
4521 shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting
4522 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title
4523 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31
4524 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et
4525 seq.) of Chapter 12 of Title 18.2.

4526 VI. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.

4527 The policy and procedures for disposal for surplus materials shall provide for the sale,
4528 environmentally-appropriate disposal, or recycling of surplus materials by the College and the retention
4529 of the resulting proceeds by the College.

4530 VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND
4531 PROCEDURES.

4532 The President shall adopt one or more comprehensive sets of specific procurement policies and
4533 procedures for the College, which, in addition to the Rules, implement applicable provisions of law and
4534 this Policy. College procurements shall be carried out in accordance with this Policy, the Rules, and
4535 any implementing policies and procedures adopted by the College. The implementing policies and
4536 procedures (i) shall include the delegation of procurement authority by the Board to appropriate
4537 College officials who shall oversee College procurements of goods, services, insurance, and
4538 construction, including a grant of authority to such officials to engage in further delegation of authority
4539 as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set
4540 forth in Part V above.

4541 Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall
4542 become effective on the Effective Date of the College's initial Management Agreement with the
4543 Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the
4544 College on behalf of the College for goods, services, insurance, and construction. This Policy, the
4545 Rules, and any implementing policies and procedures adopted by the College shall not affect existing
4546 contracts already in effect.

4547 The Rules and College implementing policies and procedures for all College procurements of goods,
4548 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 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.

§ 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 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.

- 4733 *"Construction management contract" means a contract in which a party is retained by the owner to*
4734 *coordinate and administer contracts for construction services for the benefit of the owner, and may also*
4735 *include, if provided in the contract, the furnishing of construction services to the owner.*
- 4736 *"Covered Institution" or "Institution" means, on and after the effective date of the initial management*
4737 *agreement with the Commonwealth of Virginia, a public institution of higher education of the*
4738 *Commonwealth that has entered into a management agreement with the Commonwealth to be governed*
4739 *by the provisions of Subchapter 3 of the Restructuring Act.*
- 4740 *"Design-build contract" means a contract between the Institution and another party in which the*
4741 *party contracting with the Institution agrees to both design and build the structure, roadway or other*
4742 *item specified in the contract.*
- 4743 *"Goods" means all material, equipment, supplies, and printing, including information technology and*
4744 *telecommunications goods such as automated data processing hardware and software.*
- 4745 *"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of*
4746 *the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or*
4747 *delivery schedule for the goods, services or construction being procured.*
- 4748 *"Multiphase professional services contract" means a contract for the providing of professional*
4749 *services where the total scope of work of the second or subsequent phase of the contract cannot be*
4750 *specified without the results of the first or prior phase of the contract.*
- 4751 *"Nonprofessional services" means any services not specifically identified as professional services in*
4752 *the definition of professional services and includes small construction projects valued not over*
4753 *\$1,000,000; provided that subdivision 3a of the definition of "competitive negotiation" in this section*
4754 *shall still apply to professional services for such small construction projects.*
- 4755 *"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who,*
4756 *at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the*
4757 *sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured*
4758 *under the contract, and who at such time is eligible and qualified in all respects to perform that*
4759 *contract, and who would have been eligible and qualified to submit a bid or proposal had the contract*
4760 *been procured through competitive sealed bidding or competitive negotiation.*
- 4761 *"Professional services" means work performed by an independent contractor within the scope of the*
4762 *practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,*
4763 *dentistry, medicine, optometry, pharmacy or professional engineering.*
- 4764 *"Public body" means any legislative, executive or judicial body, agency, office, department, authority,*
4765 *post, commission, committee, institution, board or political subdivision created by law to exercise some*
4766 *sovereign power or to perform some governmental duty, and empowered by law to undertake the*
4767 *activities described in these Rules.*
- 4768 *"Public contract" means an agreement between the Institution and a nongovernmental source that is*
4769 *enforceable in a court of law.*
- 4770 *"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform*
4771 *fully the contract requirements and the moral and business integrity and reliability that will assure good*
4772 *faith performance, and who has been prequalified, if required.*
- 4773 *"Responsive bidder" means a person who has submitted a bid that conforms in all material respects*
4774 *to the Invitation to Bid.*
- 4775 *"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative*
4776 *Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*
- 4777 *"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction*
4778 *adopted by the governing body of the Covered Institution.*
- 4779 *"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified*
4780 *goods or nonprofessional services through real-time electronic bidding, with the award being made to*
4781 *the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed*
4782 *and bidders shall have the opportunity to modify their bid prices for the duration of the time period*
4783 *established for bid opening.*
- 4784 *"Services" means any work performed by an independent contractor wherein the service rendered*
4785 *does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials*
4786 *and supplies.*
- 4787 *"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working*
4788 *environment and individual goals that utilizes work experience and related services for assisting the*
4789 *handicapped person to progress toward normal living and a productive vocational status.*
- 4790 *§ 5. Methods of procurement. -*
- 4791 *A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for*
4792 *the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,*
4793 *or competitive negotiation as provided in this section, unless otherwise authorized by law.*
- 4794 *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.

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

4856 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to
4857 bid specified that the procurement was being conducted on behalf of other public bodies. In such
4858 instances, deviation from the procurement procedures set forth in these Rules and the administrative
4859 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of
4860 the above, use of cooperative contracts shall conform to the business requirements of the
4861 Commonwealth's electronic procurement system, including the requirement for payment of applicable
4862 fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee
4863 that will allow for participation in any such arrangement.

4864 B. In circumstances where statewide contracts for goods and services, including information
4865 technology and telecommunications goods and services, do not provide goods and services to meet the
4866 Institution's business goals and objectives, and as authorized by the United States Congress and
4867 consistent with applicable federal regulations, and provided the terms of the contract permit such
4868 purchases:

4869 1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services
4870 Administration contract or a contract awarded by any other agency of the U.S. government; and

4871 2. The Institution may purchase telecommunications and information technology goods and
4872 nonprofessional services from a U.S. General Services Administration contract or a contract awarded by
4873 any other agency of the U.S. government.

4874 § 7. Design-build or construction management contracts authorized. -

4875 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
4876 price design-build basis or construction management basis in accordance with the provisions of this
4877 section.

4878 B. Procurement of construction by the design-build or construction management method shall be a
4879 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
4880 qualifications. Based upon the information submitted and any other relevant information which the
4881 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
4882 selected by the Commonwealth and requested to submit proposals.

4883 § 8. Modification of the contract. -

4884 A. A contract awarded by the Institution may include provisions for modification of the contract
4885 during performance, but no fixed-price contract may be increased by more than twenty-five percent of
4886 the amount of the contract or \$50,000, whichever is greater, without the advance written approval of
4887 the Institution's president or his designee. In no event may the amount of any contract, without
4888 adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror
4889 from the consequences of an error in its bid or offer.

4890 B. The Institution may extend the term of an existing contract for services to allow completion of
4891 any work undertaken but not completed during the original term of the contract.

4892 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
4893 modifications.

4894 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

4895 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
4896 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
4897 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
4898 Institution shall include businesses selected from a list made available by the Department of Minority
4899 Business Enterprise.

4900 B. The Institution shall establish programs consistent with this section to facilitate the participation
4901 of small businesses and businesses owned by women and minorities in procurement transactions. The
4902 programs established shall be in writing and shall include cooperation with the Department of Minority
4903 Business Enterprise, the United States Small Business Administration, and other public or private
4904 agencies. The Institution shall submit annual progress reports on minority business procurement to the
4905 Department of Minority Business Enterprise.

4906 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive
4907 analysis that documents a statistically significant disparity between the availability and utilization of
4908 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require
4909 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing
4910 law.

4911 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
4912 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination
4913 that employing ex-offenders on the specific contract is not in its best interest.

4914 § 10. Employment discrimination by contractor prohibited; required contract provisions. - The
4915 Institution shall include in every contract of more than \$10,000 the following provisions:

4916 1. During the performance of this contract, the contractor agrees as follows:

4917 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

4979 event that a contractor is denied prequalification, the written notification to the contractor shall state
4980 the reasons for the denial of prequalification and the factual basis of such reasons.

4981 A decision by the Institution denying prequalification under the provisions of this subsection shall be
4982 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

4983 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the
4984 following:

4985 1. The contractor does not have sufficient financial ability to perform the contract that would result
4986 from such procurement. If a bond is required to ensure performance of a contract, evidence that the
4987 contractor can acquire a surety bond from a corporation included on the United States Treasury list of
4988 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to
4989 establish the financial ability of the contractor to perform the contract resulting from such procurement;

4990 2. The contractor does not have appropriate experience to perform the construction project in
4991 question;

4992 3. The contractor or any officer, director or owner thereof has had judgments entered against him
4993 within the past ten years for the breach of contracts for governmental or nongovernmental construction,
4994 including, but not limited to, design-build or construction management;

4995 4. The contractor has been in substantial noncompliance with the terms and conditions of prior
4996 construction contracts with the Institution without good cause. If the Institution has not contracted with
4997 a contractor in any prior construction contracts, the Institution may deny prequalification if the
4998 contractor has been in substantial noncompliance with the terms and conditions of comparable
4999 construction contracts with another public body without good cause. The Institution may not utilize this
5000 provision to deny prequalification unless the facts underlying such substantial noncompliance were
5001 documented in writing in the prior construction project file and such information relating thereto given
5002 to the contractor at that time, with the opportunity to respond;

5003 5. The contractor or any officer, director, owner, project manager, procurement manager or chief
5004 financial official thereof has been convicted within the past ten years of a crime related to governmental
5005 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6
5006 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental
5007 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
5008 substantially similar law of the United States or another state;

5009 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an
5010 established debarment procedure from bidding or contracting by any public body, agency of another
5011 state or agency of the federal government; and

5012 7. The contractor failed to provide to the Institution in a timely manner any information requested
5013 by the Institution relevant to subdivisions 1 through 6 of this subsection.

5014 § 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid
5015 from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest
5016 responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to
5017 obtain a contract price within available funds. However, the negotiation may be undertaken only under
5018 conditions and procedures described in writing and approved by the Institution prior to issuance of the
5019 Invitation to Bid and summarized therein.

5020 § 16. Cancellation, rejection of bids; waiver of informalities. -

5021 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or
5022 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of
5023 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,
5024 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a
5025 particular responsive and responsible bidder or offeror.

5026 B. The Institution may waive informalities in bids.

5027 § 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no
5028 insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus
5029 lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to
5030 the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall
5031 preclude the Institution from debarring a prospective insurer pursuant to § 18.

5032 § 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of
5033 supplies, services, insurance or construction, for specified periods of time. Any debarment procedure
5034 shall be established in writing by the Institution. Any debarment procedure may provide for debarment
5035 on the basis of a contractor's unsatisfactory performance for the Institution.

5036 § 19. Purchase programs for recycled goods; Institution responsibilities. -

5037 A. The Institution may implement a purchase program for recycled goods and may coordinate its
5038 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
5039 the Code of Virginia and §§ 20 and 22 of these Rules.

5040 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 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

5102 labor to or perform any subcontract or other work agreement for the person or firm to whom the
5103 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
5104 which the withdrawn bid was submitted.

5105 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
5106 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the
5107 bid price, provided such bidder is a responsible and responsive bidder.

5108 § 24. Contract Pricing Arrangements. -

5109 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
5110 basis that is not prohibited by these Rules.

5111 B. Except in case of emergency affecting the public health, safety or welfare, no public contract
5112 shall be awarded on the basis of cost plus a percentage of cost.

5113 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis
5114 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in
5115 whole or part as a percentage of such claims, shall not be prohibited by this section.

5116 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

5117 A. No contractor shall perform any work on a construction project of the Institution unless he (i)
5118 has obtained, and continues to maintain for the duration of the work, workers' compensation coverage
5119 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides
5120 prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

5121 B. The Department of General Services shall provide the form to the Institution. Failure of the
5122 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
5123 of subsection A.

5124 C. No subcontractor shall perform any work on a construction project of the Institution unless he
5125 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
5126 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

5127 § 26. Retainage on construction contracts. -

5128 A. In any contract issued by the Institution for construction that provides for progress payments in
5129 installments based upon an estimated percentage of completion, the contractor shall be paid at least
5130 ninety-five percent of the earned sum when payment is due, with no more than five percent being
5131 retained to ensure faithful performance of the contract. All amounts withheld may be included in the
5132 final payment.

5133 B. Any subcontract for a public project that provides for similar progress payments shall be subject
5134 to the provisions of this section.

5135 § 27. Public construction contract provisions barring damages for unreasonable delays declared
5136 void. -

5137 A. Any provision contained in any public construction contract of the Institution that purports to
5138 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
5139 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
5140 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
5141 causes within their control shall be void and unenforceable as against public policy.

5142 B. Subsection A shall not be construed to render void any provision of a public construction
5143 contract awarded by the Institution that:

5144 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
5145 contractor, or its subcontractors, agents or employees;

5146 2. Requires notice of any delay by the party claiming the delay;

5147 3. Provides for liquidated damages for delay; or

5148 4. Provides for arbitration or any other procedure designed to settle contract disputes.

5149 C. A contractor making a claim against the Institution for costs or damages due to the alleged
5150 delaying of the contractor in the performance of its work under any public construction contract of the
5151 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
5152 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
5153 shall be equal to the percentage of the contractor's total delay claim that is determined through
5154 litigation or arbitration to be false or to have no basis in law or in fact.

5155 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
5156 the contractor in the performance of work under any public construction contract for the Institution, it
5157 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to
5158 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution
5159 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is
5160 determined through litigation or arbitration to have been made in bad faith.

5161 § 28. Bid bonds. -

5162 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of
5163 \$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.

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

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

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

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

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

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the

5225 day on which the claimant performed the last of the labor or furnished the last of the materials for
5226 which he claims payment, stating with substantial accuracy the amount claimed and the name of the
5227 person for whom the work was performed or to whom the material was furnished. Notice to the
5228 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to
5229 such contractor at any place where his office is regularly maintained for the transaction of business.
5230 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not
5231 be subject to the time limitations stated in this subsection.

5232 C. Any action on a payment bond shall be brought within one year after the day on which the
5233 person bringing such action last performed labor or last furnished or supplied materials.

5234 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
5235 it is in writing, signed by the person whose right is waived, and executed after such person has
5236 performed labor or furnished material in accordance with the contract documents.

5237 § 34. Public inspection of certain records. -

5238 A. Except as provided in this section, all proceedings, records, contracts and other public records
5239 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
5240 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
5241 seq.).

5242 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
5243 shall not be open to public inspection.

5244 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect
5245 bid records within a reasonable time after the opening of all bids but prior to award, except in the
5246 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,
5247 bid records shall be open to public inspection only after award of the contract.

5248 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect
5249 proposal records within a reasonable time after the evaluation and negotiations of proposals are
5250 completed but prior to award, except in the event that the Institution decides not to accept any of the
5251 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection
5252 only after award of the contract.

5253 E. Any inspection of procurement transaction records under this section shall be subject to
5254 reasonable restrictions to ensure the security and integrity of the records.

5255 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in
5256 connection with a procurement transaction or prequalification application submitted pursuant to
5257 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et
5258 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to
5259 or upon submission of the data or other materials, (ii) identify the data or other materials to be
5260 protected, and (iii) state the reasons why protection is necessary.

5261 § 35. Exemption for certain transactions. -

5262 A. The provisions of these Rules shall not apply to:

5263 1. The selection of services related to the management and investment of the Institution's endowment
5264 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be
5265 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by
5266 § 23-76.1.

5267 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the
5268 Institution. However, such purchase procedures shall provide for competition where practicable.

5269 3. Procurement of any construction or planning and design services for construction by the
5270 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is
5271 obligated to conform to procurement procedures that are established by federal statutes or regulations,
5272 whether or not those federal procedures are in conformance with the provisions of these Rules.

5273 4. The University of Virginia Medical Center.

5274 5. The purchase of goods and services by the Institution when such purchases are made under a
5275 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

5276 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
5277 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
5278 regulations not in conformance with the provisions of these Rules, the Institution may comply with such
5279 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination
5280 of the Institution's President or his designee that acceptance of the grant or contract funds under the
5281 applicable conditions is in the public interest. Such determination shall state the specific provision of
5282 these Rules in conflict with the conditions of the grant or contract.

5283 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

5284 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into
5285 contracts with faith-based organizations for the purposes described in this section on the same basis as
5286 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;

5348 8. Royalties; or

5349 9. The purchase of legal services, provided that the Office of the Attorney General has been
5350 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

5351 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
5352 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility
5353 service without competitive sealed bidding or competitive negotiation if purchased through an
5354 association of which the Institution is a member if the association was formed and is maintained for the
5355 purpose of promoting the interest and welfare of and developing close relationships with similar public
5356 bodies, provided such association has procured the insurance or electric utility services by use of
5357 competitive principles and provided that the Institution has made a determination in advance after
5358 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive
5359 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this
5360 determination.

5361 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning:

5362 "Contractor" means the entity that has a direct contract with the Institution.

5363 "Debtor" means any individual, business, or group having a delinquent debt or account with any
5364 state agency that obligation has not been satisfied or set aside by court order or discharged in
5365 bankruptcy.

5366 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
5367 provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days
5368 after receipt of a proper invoice by the Institution or its agent or (b) thirty days after receipt of the
5369 goods or services by the Institution..

5370 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor
5371 to whom the contract was awarded or to any subcontractor in the performance of the work provided for
5372 in such contract.

5373 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment
5374 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

5375 § 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the
5376 provisions of § 26 relating to retainage shall remain valid.

5377 § 42. Prompt payment of bills by the Institution. -

5378 A. The Institution shall promptly pay for the completely delivered goods or services by the required
5379 payment date.

5380 Payment shall be deemed to have been made when offset proceedings have been instituted, as
5381 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

5382 B. Separate payment dates may be specified for contracts under which goods or services are
5383 provided in a series of partial deliveries or executions to the extent that such contract provides for
5384 separate payment for such partial delivery or execution.

5385 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where
5386 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall
5387 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by
5388 the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods
5389 or services.

5390 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made
5391 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these
5392 Rules.

5393 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall
5394 include:

5395 1. A payment clause that obligates the contractor to take one of the two following actions within
5396 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
5397 subcontractor under that contract:

5398 a. Pay the subcontractor for the proportionate share of the total payment received from the
5399 Institution attributable to the work performed by the subcontractor under that contract; or

5400 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of
5401 the subcontractor's payment with the reason for nonpayment.

5402 2. A payment clause that requires (i) individual contractors to provide their social security numbers
5403 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
5404 numbers.

5405 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all
5406 amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor
5407 of payment from the Institution for work performed by the subcontractor under that contract, except for
5408 amounts withheld as allowed in subdivision 1.

5409 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 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.

5471 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,
5472 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the
5473 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released
5474 only upon a final determination that the bidder was entitled to withdraw the bid.

5475 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an
5476 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the
5477 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation
5478 to Bid, the sole relief shall be withdrawal of the bid.

5479 § 49. Determination of nonresponsibility. -

5480 A. Following public opening and announcement of bids received on an Invitation to Bid, the
5481 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed
5482 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent
5483 low bidder is responsible. If the Institution so determines, then it may proceed with an award in
5484 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution
5485 determines that the apparent low bidder is not responsible, it shall proceed as follows:

5486 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify
5487 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for
5488 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that
5489 relate to the determination, if so requested by the bidder within five business days after receipt of the
5490 notice.

5491 2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information
5492 challenging the evaluation. The Institution shall issue its written determination of responsibility based
5493 on all information in the possession of the Institution, including any rebuttal information, within five
5494 business days of the date the Institution received the rebuttal information. At the same time, the
5495 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

5496 3. Such notice shall state the basis for the determination, which shall be final unless the bidder
5497 appeals the decision within ten days after receipt of the notice by invoking administrative procedures
5498 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action
5499 as provided in § 54.

5500 The provisions of this subsection shall not apply to procurements involving the prequalification of
5501 bidders and the rights of any potential bidders under such prequalification to appeal a decision that
5502 such bidders are not responsible.

5503 B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the
5504 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in
5505 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or
5506 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the
5507 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or
5508 directed award as provided in subsection A of § 54, or both.

5509 If it is determined that the decision of the Institution was not an honest exercise of discretion, but
5510 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable
5511 state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract
5512 has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

5513 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract
5514 shall proceed under this section, and may not protest the award or proposed award under the
5515 provisions of § 50 of these Rules.

5516 D. Nothing contained in this section shall be construed to require the Institution, when procuring by
5517 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed
5518 to be the most advantageous.

5519 § 50. Protest of award or decision to award. -

5520 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall
5521 submit the protest in writing to the Institution, or an official designated by the Institution, no later than
5522 ten days after the award or the announcement of the decision to award, whichever occurs first. Public
5523 notice of the award or the announcement of the decision to award shall be given by the Institution in
5524 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any
5525 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to
5526 protest the award or decision to award such contract shall submit the protest in the same manner no
5527 later than ten days after posting or publication of the notice of such contract as provided in § 5 of these
5528 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part
5529 upon information contained in public records pertaining to the procurement transaction that are subject
5530 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall
5531 expire ten days after those records are available for inspection by such bidder or offeror under § 34, or
5532 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 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

5594 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation
5595 to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of
5596 prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder,
5597 having been previously determined by the Institution to be not responsible in accordance with § 4, is
5598 found by the court to be a responsible bidder, the court may direct the Institution to award the contract
5599 to such bidder in accordance with the requirements of this section and the Invitation to Bid.

5600 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
5601 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
5602 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
5603 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
5604 or the terms or conditions of the Invitation to Bid.

5605 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a
5606 sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award
5607 or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
5608 court challenging a proposed award or the award of a contract, which shall be reversed only if the
5609 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,
5610 but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable
5611 state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

5612 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
5613 of reasonable security to protect the Institution.

5614 E. A contractor may bring an action involving a contract dispute with the Institution in the
5615 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
5616 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
5617 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
5618 Accounts.

5619 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards
5620 of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or
5621 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same
5622 procurement transaction unless the Institution agrees otherwise.

5623 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a
5624 contractor.

5625 § 55. Administrative appeals procedure. -

5626 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to
5627 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from
5628 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes
5629 arising during the performance of a contract, or (v) any of these. Such administrative procedure may
5630 include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a
5631 disinterested person or panel, the opportunity to present pertinent information and the issuance of a
5632 written decision containing findings of fact. The disinterested person or panel shall not be an employee
5633 of the governmental entity against whom the claim has been filed. The findings of fact shall be final
5634 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious;
5635 (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the
5636 findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14
5637 of these Rules. No determination on an issue of law shall be final if appropriate legal action is
5638 instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute
5639 Resolution Council in establishing an Alternative Dispute Resolution ("ADR") procedure.

5640 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute
5641 judicial review if such action is brought within thirty days of receipt of the written decision.

5642 § 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes
5643 arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and
5644 other alternative dispute resolution procedures. However, such procedures shall be nonbinding and
5645 subject to § 2.2-514 of the Code of Virginia, as applicable.

5646 § 57. Ethics in public contracting. - The Institution and its governing body, officers and employees
5647 shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement
5648 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

5649 EXHIBIT K

5650 MANAGEMENT AGREEMENT
5651 BETWEEN
5652 THE COMMONWEALTH OF VIRGINIA
5653 AND
5654
5655

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 the College for its employees.

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 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 Board of Visitors of the College of William & Mary and the Virginia Institute of Marine Science.

"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.

"College" means the College of William and Mary in Virginia, formerly known as agency 204 and the Virginia Institute of Marine Science, formerly known as agency 268.

"College employee" means a Covered Employee.

"College Human Resources System" means the human resources system for College employees as provided for herein.

ENGROSSED

SB675E

5717 "Covered Employee" means any person who is employed by the College on either a salaried or
5718 non-salaried (wage) basis.

5719 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement
5720 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that
5721 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of
5722 Subchapter 3 of the Act.

5723 "Employee" means Covered Employee unless the context clearly indicates otherwise.

5724 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
5725 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
5726 missions of the College.

5727 "Effective Date" means the effective date of the initial Management Agreement between the College
5728 and the Commonwealth.

5729 "Governing Law" means the Act and the College's Enabling Legislation.

5730 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
5731 between the College and the Commonwealth.

5732 "Participating Covered Employee" means (i) all salaried nonfaculty College employees who were
5733 employed as of the day prior to the Effective Date of the College's initial Management Agreement with
5734 the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be governed
5735 by such human resources program or programs, plans, policies, and procedures established by the
5736 College, (ii) all salaried nonfaculty College employees who are employed by the College on or after the
5737 Effective Date of the initial Management Agreement between the College and the Commonwealth, (iii)
5738 all non-salaried nonfaculty College employees without regard to when they were hired, (iv) all faculty
5739 College employees without regard to when they were hired.

5740 "Systems" means collectively the College Human Resources System that is in effect from time to time.

5741 III. SCOPE AND PURPOSE OF COLLEGE HUMAN RESOURCES POLICIES.

5742 The College has had human resources system autonomy through decentralization for its employees
5743 for some time. For example, general faculty at the College are expressly exempt from the Virginia
5744 Personnel Act. The College has had decentralization in most human resources functions and activities
5745 since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the
5746 administration of hiring, classification, and promotion practices.

5747 The Act extends and reinforces the human resources autonomy previously granted to the College.
5748 This Policy therefore is adopted by the Board of Visitors to enable the College to develop, adopt, and
5749 have in place by or after the Effective Date of its initial Management Agreement with the
5750 Commonwealth, a human resources system or systems for all College employees. On that Effective
5751 Date, and until changed by the College or unless otherwise specified in this Policy, the systems for
5752 College employees shall be the same systems applicable to those employees in effect immediately prior
5753 to that Effective Date.

5754 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

5755 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
5756 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
5757 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
5758 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
5759 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
5760 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
5761 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
5762 and procedures.

5763 V. COLLEGE OF WILLIAM & MARY HUMAN RESOURCES SYSTEMS.

5764 A. Adoption and Implementation of College Human Resources Systems.

5765 The President is hereby authorized to adopt and implement human resources systems for employees
5766 of the College that are consistent with the Governing Law, other applicable provisions of law, these
5767 College human resources policies for College employees, and any other human resources policies
5768 adopted by the Department of Human Resource Management or the Board of Visitors for College
5769 personnel, unless College employees are exempted from those other human resources policies by law or
5770 policy. The College Human Resources Systems shall include a delegation of personnel authority to
5771 appropriate College officials responsible for overseeing and implementing the College Human Resources
5772 Systems, including a grant of authority to such officials to engage in further delegation of authority as
5773 the President or his designee deems appropriate.

5774 The College commits to regularly engage employees in appropriate discussions and to receive
5775 employee input as the new College Human Resources Systems are developed. The College will regularly
5776 communicate the details of new proposals to all employees who are eligible to participate in the College
5777 Human Resources System through written communication, open meetings, and website postings as
5778 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 of that College Human Resources System.

The College shall provide each of its salaried nonfaculty College employees who was in the employment of the College as of the day prior to the Effective Date of the College's initial Management Agreement with the Commonwealth at least 90 days after the date on which the College Human Resources System becomes effective for that College employee's classification of employees to make the election required by the prior paragraph. If such a salaried nonfaculty College employee does not make an election by the end of that specified election period, that College employee shall be deemed not to have elected to participate in the College Human Resources System. If such a salaried nonfaculty College employee elects to participate in the College Human Resources System, that election shall be irrevocable. At least every two years, the College shall offer to salaried nonfaculty College 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 College Human Resources System, provided that, each time prior to offering such opportunity to such salaried nonfaculty College employees, and at least once every two years after the effective date of the College Human Resources System, the College shall make available to each of its salaried nonfaculty College employees a comparison of its human resources program for that classification of salaried nonfaculty College 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.

5840 *General. The Systems shall include classification and compensation plans that are fair and*
5841 *reasonable, and are based on the availability of College financial resources. The plans adopted by the*
5842 *College Participating Covered Employees shall be independent of, and need not be based on, the*
5843 *classification and compensation plans of the Commonwealth, do not require the approval of any State*
5844 *agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth*
5845 *in paragraph 3 below. The College shall provide information on its classification and compensation*
5846 *plans to all College employees. The plans applicable to Participating Covered Employees may or may*
5847 *not include changes in classification or compensation announced by the Commonwealth depending on*
5848 *such factors as the availability of necessary financial resources to fund any such changes, and subject*
5849 *to the review and approval by the Board of Visitors of any major changes in the College's compensation*
5850 *plans.*

5851 *Classification Plan. The Systems shall include one or more classification plans for College*
5852 *employees that classify positions according to job responsibilities and qualifications. On the Effective*
5853 *Date of the College's initial Management Agreement with the Commonwealth, and until changed by the*
5854 *College, the classification plans shall be the same plans that are in effect for each group of employees*
5855 *immediately prior to that Effective Date.*

5856 *Compensation Plan. The Systems shall include one or more compensation plans for each College*
5857 *employee classification or group. On the Effective Date of the College's initial Management Agreement*
5858 *with the Commonwealth, and until changed by the Department of Human Resource Management, the*
5859 *compensation plan for Classified Employees in the College shall be the compensation plan in effect*
5860 *immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan.*
5861 *On that Effective Date, and until changed by the College, the compensation plan or plans for all*
5862 *Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to*
5863 *that Effective Date. The College may adopt one or more compensation plans for Participating Covered*
5864 *Employees that are non-graded plan(s) based on internal and external market data and other relevant*
5865 *factors to be determined annually. Any major change in compensation plans for Participating Covered*
5866 *Employees shall be reviewed and approved by the Board of Visitors before that change becomes*
5867 *effective. Any change recommended in the compensation plans may take into account the prevailing*
5868 *rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the*
5869 *competency and skills of the individual employee, internal equity, and the availability of necessary*
5870 *financial resources to fund the proposed change. The compensation payable to College employees shall*
5871 *be authorized and approved only by designated College officers delegated such authority by the College,*
5872 *and shall be consistent with the approved compensation plan for the relevant position or classification.*
5873 *Further approval by any other State Agency, governmental body or officer is not required for setting,*
5874 *adjusting or approving the compensation payable to individual Participating Covered Employees.*

5875 *Wages. The Systems shall include policies and procedures for the authorization, computation and*
5876 *payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and*
5877 *call back, and for the payment of hourly employees.*

5878 *Payment of Compensation. The Systems shall include policies and procedures for paying*
5879 *compensation to employees, including the establishment of one or more payday schedules.*

5880 *Work Schedule and Workweek. The Systems shall include policies and procedures for the*
5881 *establishment of, and modifications to, work schedules and workweeks for all College employees,*
5882 *including alternative work schedules and sites, and telecommuting policies and procedures.*

5883 *Other Classification and Compensation Policies and Procedures. The Systems may include any other*
5884 *reasonable classification and compensation policies and procedures the President deems appropriate.*

5885 *C. Benefits.*

5886 *The Systems shall provide fringe benefits to all benefits eligible employees, including retirement*
5887 *benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The*
5888 *benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may*
5889 *include an optional benefits plan for benefits eligible employees, including additional insurance*
5890 *coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance*
5891 *programs, employee intramural and recreational passes, and other wellness programs. As provided in*
5892 *§23-38.119.B and C of the Act, the College may require Participating Covered Employees to pay all or*
5893 *a portion of the cost of group life, disability and accidental death and dismemberment insurance, which*
5894 *may be collected through a payroll deduction program. Participating Covered Employees shall not be*
5895 *required to present evidence of insurability for basic group life insurance coverage. The Board of*
5896 *Visitors may elect to provide benefits through Virginia Retirement System group insurance programs*
5897 *under the terms of and to the extent allowed by §23-38.119B and D of the Act or any other provision of*
5898 *law.*

5899 *Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until*
5900 *that section is amended, the state retirement system, state health insurance program, and state workers'*
5901 *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. At regular intervals, the College shall engage in consultations and discussions with, and receive input from, diverse employee groups regarding human resources issues, including the Academic Division Human Resources System and the College Human Resources System.

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.

Workers' Compensation. The Systems shall ensure that College 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 College employees that (i) establish and communicate the College'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 College employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of College employees. On the Effective Date of the College's initial Management Agreement with the Commonwealth, the existing merit-based performance management system for faculty shall continue, until amended by the College. On or after that Effective Date, College 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 College operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for College

5963 *salaried nonfaculty employees and policies for corrective discipline. In general, the policies for*
5964 *corrective discipline shall serve to (i) establish a uniform and objective process for correcting or*
5965 *disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more*
5966 *serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action*
5967 *to employee conduct occurring only when employees are at work or are otherwise representing the*
5968 *College in an official or work-related capacity, unless otherwise specifically provided by the policies of*
5969 *the Systems or other applicable law. The Systems may provide for a probationary period for new and*
5970 *re-employed College salaried nonfaculty employees, during which period the policies for corrective*
5971 *discipline shall not be applicable and the employee may not use the grievance procedure set forth in the*
5972 *next paragraph. The Systems may include separate rules of personal conduct and standards of*
5973 *acceptable work performance and policies for corrective discipline for reasonably distinguishable groups*
5974 *of College employees.*

5975 *10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to*
5976 *resolve employment-related problems and complaints informally, and shall be permitted to discuss their*
5977 *concerns freely and without fear of retaliation with immediate supervisors and management. In the*
5978 *event that such problems cannot be resolved informally, all salaried nonfaculty College employees,*
5979 *regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in*
5980 *§ 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of*
5981 *the Code of Virginia, to the extent it was applicable to their classification of employees prior to the*
5982 *Effective Date of the College's initial Management Agreement with the Commonwealth. On that*
5983 *Effective Date, and until changed by the College, the faculty grievance procedures in effect immediately*
5984 *prior to the Effective Date shall continue.*

5985 *11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the*
5986 *Classified Employee may file a complaint with the Department of Human Resource Management Office*
5987 *of Equal Employment Services. All Covered Employees and applicants for employment after the*
5988 *Effective Date of the College's initial Management Agreement with the Commonwealth shall file a*
5989 *complaint with the appropriate College office or with the appropriate federal agencies.*

5990 *12. Layoff Policy. The Systems shall include one or more layoff policies for salaried College*
5991 *employees who lose their jobs for reasons other than their job performance or conduct, such as a*
5992 *reduction in force or reorganization at the College. These College layoff policies shall govern such*
5993 *issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)*
5994 *notice to employees affected by a layoff, (iv) placement options within the College or its respective major*
5995 *divisions and within other parts of the College, (v) the preferential employment rights, if any, of various*
5996 *College employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling*
5997 *employees. In accordance with the terms of the Act, College employees who: (i) were employed prior to*
5998 *the Effective Date of the College's initial Management Agreement with the Commonwealth, (ii) would*
5999 *otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by*
6000 *the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in*
6001 *force shall have the same preferential hiring rights with State agencies and other executive branch*
6002 *institutions as Classified Employees have under § 2.2-3201 of the Code of Virginia. Conversely, the*
6003 *College shall recognize the hiring preference conferred by § 2.2-3201 on State employees who were*
6004 *hired by a State agency or executive branch institution before the Effective Date of the College's initial*
6005 *Management Agreement with the Commonwealth and who were separated after that date by that State*
6006 *agency or executive branch institution because of a reduction in workforce. If the College has adopted*
6007 *a classification system pursuant to § 23-38.116 of the Act that differs from the classification system*
6008 *administered by the Department of Human Resource Management, the College shall classify the*
6009 *separated employee according to its classification system and shall place the separated employee*
6010 *appropriately. The College may include separate policies for reasonably distinguishable groups of*
6011 *College employees. On or after the Effective Date of the College's initial Management Agreement with*
6012 *the Commonwealth, all employees from other State agencies and executive branch institutions who are*
6013 *placed by the College under the provisions of the State Layoff Policy shall be Participating Covered*
6014 *Employees.*

6015 *13. Severance Benefits. In accordance with the terms of the Act, the College shall adopt severance*
6016 *policies for salaried Participating Covered Employees who are involuntarily separated for reasons*
6017 *unrelated to performance or conduct. The terms and conditions of such policies shall be determined by*
6018 *the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior*
6019 *to the Effective Date of the College's initial Management Agreement with the Commonwealth shall be*
6020 *covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of*
6021 *Virginia. The College and the Board of the Virginia Retirement System may negotiate a formula*
6022 *according to which cash severance benefits may be converted to years of age or creditable service for*
6023 *Participating Covered Employees who participate in the Virginia Retirement System. An employee's*
6024 *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 procedures to ensure that all aspects of human resources management, including the employment of College 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 College 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 College shall post all salaried nonfaculty position vacancies through the College'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 College's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. College Classified Employees who change jobs within the College through a competitive

6086 employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified
6087 Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a
6088 Participating Covered Employee, that decision shall be irrevocable.

6089 Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice,
6090 where appropriate, of a decision either by the employee or by the College to separate the employee
6091 from the College in accordance with policies governing performance, conduct, or layoff.

6092 G. Information Systems.

6093 The College shall provide an electronic file transfer of information on all salaried College employees
6094 and shall continue to provide the Employee Position Reports to meet the human resources reporting
6095 requirements specified by law or by request of the Governor or the General Assembly, unless the
6096 College is specifically exempted from those requirements. The College shall conduct assessments to
6097 demonstrate its accountability for human resources practices that comply with laws and regulations.
6098 The Department of Human Resource Management and the College have entered into a Memorandum of
6099 Understanding, attached hereto as Attachment 2, which may be amended from time to time by
6100 agreement of the parties, regarding the specific data and reporting requirements. The College shall be
6101 accountable for ensuring the timeliness and integrity of the data transmitted to the Department of
6102 Human Resources Management.

6103 VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND
6104 OTHER BOARD OF VISITORS' POLICIES AFFECTING COLLEGE PERSONNEL.

6105 On and after the Effective Date of its initial Management Agreement with the Commonwealth,
6106 College employees shall be subject to the terms and conditions of the Act and the Management
6107 Agreement between the Commonwealth and the College. Classified Employees shall continue to be
6108 subject to the human resources policies and exceptions to those policies adopted or approved by the
6109 Department of Human Resource Management.

6110 In addition, all College employees also shall remain subject to any other human resources policies
6111 adopted by the Board of Visitors applicable to College personnel unless College employees or a subset
6112 thereof are specifically exempted from those other human resources policies either by those other
6113 policies or by this Policy.

6114

6115

ATTACHMENT 2

6116

6117

Memorandum of Understanding

6118

Between the The College of William and Mary and the
Department of Human Resources Management Regarding

6119

The Reporting of Human Resources Management Data

6120

6121 This Memorandum of Understanding, which may be amended from time to time by the agreement of
6122 all parties, is an attachment to the Policy Governing Human Resources for Participating Covered
6123 Employees and Other College Employees pursuant to the Restructured Higher Education Financial and
6124 Administrative Operations Act of 2005, and is hereby entered into between the College of William and
6125 Mary and the Department of Human Resource Management (DHRM).

6126 I. This document outlines the provisions for information management pertaining to human resources
6127 data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting
6128 requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so
6129 through efficient and cost-effective methods.

6130 1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will
6131 be transmitted through an electronic file transfer to update DHRM's warehouse.

6132 a. The College will provide a flat file of designated personnel data. For "Classified Employees", the
6133 data provided will match DHRM's data values for the designated fields. For salaried "Participating
6134 Covered Employees", the data provided will include the University's data values for the designated
6135 fields. The College will provide a data dictionary to DHRM. The file of designated data will be
6136 specifically described by an addendum to this Memorandum upon the agreement of the University and
6137 DHRM.

6138 b. The College will provide a second flat file of salaried personnel actions for "Classified
6139 Employees" and salaried "Participating Covered Employees", such as promotions, separations, and
6140 salary adjustments. The file of relevant personnel actions and designated data to be provided for each
6141 action will be specifically described by an addendum to this Memorandum upon the agreement of the
6142 University and DHRM.

6143 2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact
6144 analyses of employment and compensation actions that are part of the AAP, as demonstration of the
6145 College's compliance with relevant federal and state employment laws and regulations.

6146 3. The College may key data into the Benefits Enrollment System or provide a batch file, or
6147 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 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 (§ 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 and Mary and the Virginia Institute of Marine Science.

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

"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

ENGROSSED

SB675E

6209 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
6210 missions of the College.

6211 "Effective Date" means the effective date of the initial Management Agreement between the College
6212 and the Commonwealth.

6213 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
6214 between the College and the Commonwealth of Virginia.

6215 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
6216 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
6217 general government funds, as defined in the December 20, 2004 Report to the Governor and General
6218 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

6219 **III. SCOPE OF POLICY.**

6220 This Policy applies to the College's responsibility for management, investment and stewardship of all
6221 its financial resources, including but not limited to, general, non-general and private funds. This
6222 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
6223 and internal controls adequate to protect and account for the College's financial resources.

6224 The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it is
6225 implemented by the College on behalf of the Institute, but the Institute shall not receive any additional
6226 independent financial operations and management authority as a result of this Management Agreement
6227 beyond the independent financial operations and management authority that it had prior to the Effective
6228 Date of the College's initial Management Agreement with the Commonwealth or that it may be granted
6229 by law in the future.

6230 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

6231 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
6232 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
6233 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
6234 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
6235 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
6236 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
6237 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
6238 and procedures.

6239 **V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.**

6240 The President, or designee, shall continue to be authorized by the Board to maintain existing and
6241 implement new policies governing the management of College financial resources. These policies shall
6242 continue to [ensure compliance with Generally Accepted Accounting Principles and adequate risk
6243 management and internal controls to protect and safeguard all financial resources, including moneys
6244 transferred to the College pursuant to a general fund appropriation. (i) ensure compliance with
6245 Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles
6246 employed by the Commonwealth, including the use of fund accounting principles, with regard to the
6247 establishment of the underlying accounting records of the College and the allocation and utilization of
6248 resources within the accounting system, including the relevant guidance provided by the State Council of
6249 Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds
6250 from specific types of fund sources, (iii) provide adequate risk management and internal controls to
6251 protect and safeguard all financial resources, including moneys transferred to the College pursuant to a
6252 general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.]

6253 The financial management system shall continue to include a financial reporting system to satisfy
6254 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,
6255 as specified in the related State Comptroller's Directives, and the College's separately audited financial
6256 statements. To ensure observance of limitations and restrictions placed on the use of the resources
6257 available to the College, the accounting and bookkeeping system of the College shall continue to be
6258 maintained in accordance with the principles prescribed for governmental organizations by the
6259 Governmental Accounting Standards Board.

6260 In addition, the financial management system shall continue to provide financial reporting for the
6261 President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the
6262 financial operations of the College. Upon the Effective Date of the initial Management Agreement
6263 between the College and the Commonwealth, except for the recordation of daily revenue deposits of
6264 State funds as specified in Section VII below, the College shall not be required to record its financial
6265 transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the
6266 current monthly interfacing with CARS , or be a part of any subsequent Commonwealth financial
6267 systems that replace CARS or are in addition to CARS, but shall have its own financial reporting
6268 system. The College's financial reporting system shall provide (i) summary [~~year-end~~ monthly]
6269 reports for State agencies including, but not limited to, the Department of Accounts, the Department of
6270 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 enterprise funds, and all other non-general fund revenues subject to the following requirements:

i) The College 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) To be consistent with the financial incentives set forth in § 2.2-5005 of the Code of Virginia described above, the College shall not be entitled to [receive the amount of interest the State would have earned on the College's tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury if the State had continued to hold and invest such funds itself, until the fiscal year following the fiscal year for which it has received the required certification from SCHEV. Instead, the State Comptroller and the College shall enter into an agreement by which the College shall provide the State Comptroller with its daily cash balances for tuition and fees and other non-general fund Educational and General Revenues so the State Comptroller can calculate the interest the State would have earned if it had held and invested such funds itself. The State Comptroller shall withhold such amount from the general fund appropriations payable to the College pursuant to the

6332 *schedule set forth in Section IX below.— If, pursuant to subsection C of § 23-9.6:1.01, the College*
 6333 *receives the certification that it has met for a particular fiscal year the institutional performance*
 6334 *benchmarks called for by that section and approved in the then-current Appropriation Act, the College*
 6335 *shall receive such amount withheld for that fiscal year as its financial incentive as provided in*
 6336 *paragraph 1 of § 2.2-5005.— If public institutions of higher education of the Commonwealth are*
 6337 *permitted, or the College in particular is permitted, by the Appropriation Act or other law to retain or*
 6338 *be paid the interest the State would have earned on sponsored programs and research funds, then this*
 6339 *paragraph shall not apply to such interest on such funds, and such interest shall not be withheld from*
 6340 *the general fund appropriation distributed to the College pursuant to the schedule set forth in Section IX*
 6341 *below. expend the amount of interest earned on the College's tuition and fees and other non-general*
 6342 *fund Educational and General Revenues held and invested by the College until the fiscal year following*
 6343 *the fiscal year for which it has received the required certification from the State Council of Higher*
 6344 *Education for Virginia. The College shall hold in escrow all interest earned on the College's tuition*
 6345 *and fees and other non-general fund Educational and General Revenues until such time that, pursuant*
 6346 *to subsection C of § 23-9.6:1.01, the College receives the certification that it has met for a particular*
 6347 *year the institutional performance benchmarks called for by that section and approved in the*
 6348 *then-current Appropriation Act. Not later than 30 days after receipt of the required State Council of*
 6349 *Higher Education for Virginia certification (unless such 30-day period ends before July 1 in which case*
 6350 *the relevant dates shall be no earlier than July 1 but no later than July 3), the Commonwealth shall*
 6351 *make a non-general fund appropriation equivalent to the amount deposited in the escrow account as the*
 6352 *financial incentive provided in subdivision 1 of § 2.2-5005, after which time the College may expend the*
 6353 *funds for purposes related to its mission. If public institutions of higher education of the Commonwealth*
 6354 *are permitted, or the College in particular is permitted, by the Appropriation Act or other law to retain*
 6355 *or be paid the interest the Commonwealth would have earned on sponsored programs and research*
 6356 *funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be*
 6357 *held in escrow.*

6358 *(iv) If in any given year the College does not receive the certification from the State Council of*
 6359 *Higher Education for Virginia that it has met for that year the institutional benchmarks called for by*
 6360 *subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the College shall pay*
 6361 *to the Commonwealth, not later than 30 days after notification from State Council of Higher Education*
 6362 *for Virginia, the balance in the escrow account as of June 30 of that year.]*

6363 *[~~iv~~ v)] Beginning on the effective date of its initial Management Agreement with the College*
 6364 *until the beginning of the first fiscal year following the fiscal year for which it has received the required*
 6365 *certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds*
 6366 *with the State Treasurer by the same process that it would have been required to use if it had not*
 6367 *entered into a Management Agreement with the Commonwealth.*

6368 *[~~v~~ vi)] On the first business day of the first fiscal year following the fiscal year for which it has*
 6369 *received the required certification from SCHEV, the College may draw down all cash balances held by*
 6370 *the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored*
 6371 *programs, auxiliary enterprises, and all other non-general fund revenues.*

6372 *[~~vi~~ vii)] The Commonwealth shall retain all funds related to general fund appropriations, but*
 6373 *shall pay these funds to the College as specified in Section IX below.*

6374 *The College also shall have sum sufficient appropriation authority for all non-general funds as*
 6375 *approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations*
 6376 *process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general*
 6377 *fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of*
 6378 *the two years in the next biennium by November 1 of each odd numbered year and the estimate to be*
 6379 *included in the Budget Bill for the first and second year of the then-current biennium by November 1 of*
 6380 *each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to*
 6381 *the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

6382 *The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other*
 6383 *charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income*
 6384 *undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the*
 6385 *intent of the Commonwealth and the College that the College shall be exempt from the revenue*
 6386 *restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,*
 6387 *unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the*
 6388 *College that the College shall be entitled to retain non-general fund savings generated from changes in*
 6389 *Commonwealth rates and charges, including but not limited to health, life, and disability insurance*
 6390 *rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting*
 6391 *such savings back to the Commonwealth. This financial resource policy assists the College by providing*
 6392 *the framework for retaining and managing non-general funds, for the receipt of general funds, and for*
 6393 *the use and stewardship of all these funds.*

The President, or designee, shall continue to provide oversight of the College's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the College shall periodically audit the College's cash management system in accordance with appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.

For the receipt of general and non-general funds, the College shall conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.

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-twelfth (1/12)~~ of its annual general fund appropriation for Educational and General programs on the first day of each month (less the interest retention specified in Section VII above), 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

6455 of expert advice and consultation, and, after consultation with the Office of the Attorney General,
6456 private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall
6457 continue to include the ability to locally manage and administer the Commonwealth's credit card and
6458 cost recovery programs related to disbursements, subject to any restrictions contained in the
6459 Commonwealth's contracts governing those programs, provided that the College shall submit the credit
6460 card and cost recovery aspects of its financial and operations policies to the State Comptroller for
6461 review and comment prior to implementing those aspects of those policies. The disbursement policies
6462 shall ensure that adequate risk management and internal control procedures shall be maintained over
6463 previously decentralized processes for public records, payroll, and non-payroll disbursements. The
6464 College shall continue to provide summary quarterly prompt payment reports to the Department of
6465 Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

6466 The College's disbursement policies shall be guided by the principles of the Commonwealth's policies
6467 as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date
6468 of its initial Management Agreement with the Commonwealth, the College shall continue to follow the
6469 Commonwealth's disbursement policies until such time as specific alternative policies can be developed,
6470 approved and implemented. Such alternate policies shall be submitted to the State Comptroller for
6471 review and comment prior to their implementation by the College.

6472 X. DEBT MANAGEMENT.

6473 The President, or designee, shall continue to be authorized to create and implement any and all debt
6474 management policies as part of a system for the management of College financial resources.

6475 Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or
6476 other obligations that do not constitute State Tax Supported Debt [, as determined by the Treasury
6477 Board,] and that are consistent with debt capacity and management policies and guidelines established
6478 by its Board of Visitors, without obtaining the consent of any legislative body, elected official,
6479 commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without
6480 any proceedings or conditions other than those specifically required by Subchapter 3 of the Act;
6481 provided that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant
6482 to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or
6483 revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review
6484 and comment prior to its adoption by the College.

6485 The College recognizes that there are numerous types of financing structures and funding sources
6486 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by
6487 the President, or designee, within the context of the overall portfolio to ensure that any financial
6488 product or structure is consistent with the College's objectives. Regardless of the financing structure(s)
6489 utilized, the President, or designee, shall obtain sufficient documentation to gain a full understanding of
6490 the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the
6491 impact on College creditworthiness and debt capacity. All such debt or financial products issued
6492 pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of
6493 the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

6494 The College will establish guidelines relating to the total permissible amount of outstanding debt by
6495 monitoring College-wide ratios that measure debt compared to College balance-sheet resources and
6496 annual debt service burden. These measures will be monitored and reviewed regularly in light of the
6497 College's current strategic initiatives and expected debt requirements. The Board of Visitors shall
6498 periodically review and approve the College's debt capacity and debt management guidelines. Any
6499 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior
6500 to their adoption by the College.

6501 XI. INVESTMENT POLICY.

6502 It is the policy of the College to invest its operating and reserve funds solely in the interest of the
6503 College and in a manner that will provide the highest investment return with the maximum security
6504 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
6505 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence
6506 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity
6507 and familiar with such matters would use in the conduct of an enterprise of a like character and with
6508 like aims.

6509 Endowment investments shall be invested and managed in accordance with the Uniform Management
6510 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

6511 The Board of Visitors shall periodically review and approve the investment guidelines governing the
6512 College's operating and reserve funds.

6513 XII. INSURANCE AND RISK MANAGEMENT.

6514 By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any
6515 intent during the next biennium to withdraw from any insurance or risk management program made
6516 available to the College through the Commonwealth's Division of Risk Management and in which the

College is then participating, to enable the Commonwealth 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 College proceeds to withdraw from the insurance or risk management program, the College shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal [, as determined by the Commonwealth's actuaries] . Such payment shall be made in a manner agreeable to both the College and the Commonwealth.

3. That the following Chapter 3 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and The University of Virginia":

CHAPTER 3.

**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.

ENGROSSED

SB675E

6578 "Agreement" means "Management Agreement."

6579 "Board of Visitors" means the Rector and Board of Visitors of the University of Virginia.

6580 "College" means that part of the University operated as the University of Virginia's College at Wise
6581 (State Agency 246).

6582 "Covered Employee" means any person who is employed by the University on either a salaried or
6583 wage basis.

6584 "Covered Institution" means, on and after the effective date of its initial management agreement with
6585 the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has
6586 entered into a management agreement with the Commonwealth to be governed by and in accordance
6587 with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.

6588 "Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
6589 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
6590 missions of the individual public institutions of higher education of the Commonwealth, and as provided
6591 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
6592 Center.

6593 "Management Agreement" means this agreement between the Commonwealth of Virginia and the
6594 University as required by subsection D of § 23-38.88 and Subchapter 3 of the Act.

6595 "Medical Center" means that part of the University consisting of the University of Virginia Medical
6596 Center (State Agency 209), and related health care and health maintenance facilities.

6597 "Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the
6598 University.

6599 "Public institution of higher education" means those two-year and four-year institutions enumerated
6600 in § 23-14 of the Code of Virginia.

6601 "University" means the University of Virginia, consisting of the Academic Division, the College, and
6602 the Medical Center.

6603 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

6604 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability. Subchapter 3 of the
6605 Act provides that, upon the execution of, and as of the effective date for, this Management Agreement,
6606 the University shall become a Covered Institution entitled to be granted by the Commonwealth and to
6607 exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in
6608 this Management Agreement. In general, subject to its management agreement with the Commonwealth,
6609 status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is
6610 intended to replace (i) the post-General Assembly authorization prior-approval system of reviews,
6611 approvals, policies and procedures carried out and implemented by a variety of central State agencies
6612 with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully
6613 responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its
6614 management agreement with the Commonwealth.

6615 SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the
6616 enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board
6617 of Visitors polices attached hereto as Exhibits M through R, shall be subject to the reviews, assessments,
6618 and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint
6619 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or
6620 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or
6621 Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by
6622 law other than the Act.

6623 SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and
6624 limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement;
6625 Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth
6626 and the University agree that the Commonwealth has expressly granted to the University by this
6627 Management Agreement all the powers and authority contained in certain policies adopted by the Board
6628 of Visitors of the University attached hereto as Exhibits M through R and governing (1) the undertaking
6629 and implementation of capital projects, and other acquisition and disposition of property (Exhibit M),
6630 (2) the leasing of property, including capital leases (Exhibit N), (3) information technology (Exhibit O),
6631 (4) the procurement of goods, services, including certain professional services, insurance, and
6632 construction (Exhibit P), (5) human resources (Exhibit Q), and (6) its system of financial management
6633 (Exhibit R), including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to
6634 establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation
6635 authority for non-general funds as provided by the Governor and the General Assembly in the
6636 Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations
6637 contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management
6638 Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits M through
6639 R, the Commonwealth and the University agree that the Commonwealth has expressly granted to the

University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.

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 Management Agreement and the policies adopted by it and attached hereto as Exhibits M through R. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits M through R, to a person or persons within the University.

SECTION 2.1.3. Reimbursement by the University of Certain Costs. [Pursuant to subsection D(2)(c) of § 23-38.88 of the Act, the University agrees to reimburse the Commonwealth an amount mutually agreed upon with the Commonwealth for any additional costs to the Commonwealth in providing health or other group insurance benefits to employees, and in undertaking any risk management program, that are attributable to the University's exercise of any restructured financial or operational authority set forth in Subchapter 3 of the Act and included in this Management Agreement or the policies adopted by its Board of Visitors and attached hereto as Exhibits M through R. 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, 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

6701 pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth
6702 has not yet been implemented by the University, the parties agree that the University is not in a position
6703 to quantify any such cost savings at this time, although the University expects that there will be cost
6704 savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the
6705 Act and that such cost savings will be part of the determinations made during the reviews, assessments,
6706 and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the
6707 Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia,
6708 and as otherwise described in Section 2.1.1 above.

6709 SECTION 2.1.7. *Participation in State Programs.* The Commonwealth intends that the University
6710 shall continue to fully participate in, and receive funding support from the many and varied programs
6711 established now or in the future by the Commonwealth to provide support for Virginia's public
6712 institutions of higher education and for Virginians attending such institutions, including but not limited
6713 to: the state capital outlay and bond financing initiatives undertaken from time to time by the
6714 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq.
6715 of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the
6716 Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student
6717 financial assistance programs; and other statewide programs or initiatives that exist, or may be
6718 established, in support of the Commonwealth's higher education institutions, programs, or activities.

6719 As a teaching hospital that is a part of the University as of the Effective Date, the Medical Center
6720 shall continue to be characterized as a state government-owned or operated and state-owned teaching
6721 hospital for purposes of payments under the State Plan for Medicaid Services adopted pursuant to [§
6722 § 32.1-325] et seq. The University has committed to serve indigent and medically indigent patients
6723 through its adoption of the Guidelines for the Eligibility of Indigent and Medically Indigent Persons for
6724 Health Care Services at the State University Teaching Hospitals. Pursuant to subsection B of
6725 § 23-38.93 of the Act, the Commonwealth, through the Department of Medical Assistance Services, shall,
6726 subject to the appropriation in the Appropriation Act in effect, continue to reimburse the full cost of the
6727 provision of care, treatment, health-related and educational services to indigent and medically indigent
6728 patients and continue to treat the Medical Center as a Type One Hospital for purposes of such
6729 reimbursement.

6730 SECTION 2.1.8. *Implied Authority.* Pursuant to subsection D 1 of § 23-38.88 of the Act, the only
6731 implied authority granted to the University by this Management Agreement is that implied authority that
6732 is actually necessary to carry out the expressed grant of financial or operational authority contained in
6733 this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as
6734 Exhibits M through R.

6735 SECTION 2.1.9. *Exercise of Authority.* The University and the Commonwealth acknowledge and
6736 agree that the execution of this Management Agreement constitutes the conclusion of a process that, as
6737 of the effective date of this Agreement, confers upon the University the enhanced authority and
6738 operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of
6739 the Act. Therefore, without any further conditions or requirements, the University shall, on and after the
6740 effective date of this Management Agreement, be authorized to exercise the authority conferred upon it
6741 by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as
6742 Exhibits M through R, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act
6743 except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have
6744 been limited by this Management Agreement or the Board of Visitors policies attached hereto as
6745 Exhibits M through R.

6746 The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of
6747 § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of
6748 Visitors of the University shall assume full responsibility for management of the University, subject to
6749 the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this
6750 Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The
6751 Board of Visitors shall be fully accountable for (a) the management of the University as provided in the
6752 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,
6753 and (c) meeting such other provisions as are set forth in this Management Agreement.

6754 SECTION 2.2. *State Goals.*

6755 SECTION 2.2.1. *Furthering State Goals.* As required for all public institutions of higher education
6756 of the Commonwealth by subsection B of § 23-38.88, prior to August 1, 2005, the Board of Visitors of
6757 the University adopted the resolution setting forth its commitment to the Governor and the General
6758 Assembly to meet the State goals specified in that subsection B. In addition to the above commitments,
6759 the University commits to furthering these State goals by:

6760 1. In addition to its six-year target of achieving \$337 million in external research by 2011-12, the
6761 University commits to match from institutional funds, on a dollar for dollar basis, any additional
6762 research funds provided by the State in the Appropriation Act above the amount provided from

institutional funds for research in 2005-06.

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

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

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 [~~includes the following components:~~ 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 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.

6824 4. Improve satisfaction in post graduate choices of low-income financial aid recipients.

6825 Success in attaining these goals will be measured by five metrics, 1) applications from low-income
6826 students, 2) low-income applicants offered admissions, 3) low-income applicants who accepted offers, 4)
6827 yield of low-income students, and 5) percentage of low-income students in the student body. In 2005-06
6828 applications from low-income students rose 13.1 percent from the previous year for a total of 875. The
6829 University offered admission to 357 applicants, 10 percent more than in the prior year. Almost 40
6830 percent more of those low-income students to whom the University offered admission for the 2005-06
6831 academic year accepted the offer, 233 compared to 133 last year, increasing the yield from 50 percent
6832 to over 64 percent. The trend in the percentage of low-income students in the student body has also
6833 improved over the last two years increasing from 4.29 percent in 2004-05 to 6.45 percent in 2005-06.
6834 The University expects to increase the numbers of low-income students enrolled from the current 830 to
6835 1,033 by 2011-12 as outlined in the Six-Year Plan.

6836 The Academic Division will cap the amount of need-based loans to any undergraduate student who
6837 qualifies for some form of financial aid to a maximum of 25 percent of the total in-state cost of
6838 attendance over four years and will meet the remaining need with grants, beginning with the fall 2005
6839 first-year or VCCS transfer students. All students, regardless of state residency, will receive the in-state
6840 cap level. This phase will be fully implemented by fall 2008. This particular component of the program
6841 is targeted at middle-income students whose families earn between \$75,000 and \$149,999. The
6842 University's goals for this component of the program include:

- 6843 1. Improve the socio-economic diversity at the University.
6844 2. Enable financial aid recipients to have an enhanced student experience.
6845 3. Improve satisfaction in post graduate choices.

6846 Success will be measured in this area by three metrics, 1) applications from middle-income students,
6847 2) participation of financial aid recipients in study abroad, internships, volunteer work, student
6848 activities, etc., and 3) post graduate choices and starting salaries. Seven percent or 219 more
6849 middle-income students applied to the University in 2005-06 than in 2004-05 and qualified for
6850 AccessUVA benefits.

6851 The Academic Division will provide comprehensive counseling to prospective and current students
6852 and their families, assisting them in the financial aid application process and presenting them with
6853 financing options outside of need-based financial aid. This last component of the program has three
6854 main goals:

- 6855 1. Improve the perception of the University as affordable.
6856 2. Increase the socio-economic diversity of the University.
6857 3. Improve student understanding of financial planning and debt management.

6858 The University's financial aid educational programs are currently being designed. We expect to
6859 measure trends in the following ways in order to gauge success: 1) usage figures of educational
6860 programs provided on financial planning and debt management, 2) percent of financial aid applicants
6861 participating in financial management programs, and 3) evaluation of effectiveness of the educational
6862 programs.

6863 The Commonwealth and the University agree that this commitment meets the requirements of
6864 subsection B of § 23-38.104 of the Act.

6865 SECTION 2.3. Authority Granted to The University of Virginia's College at Wise. The College shall
6866 receive the benefits of the additional financial and operational authority granted by this Management
6867 Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits M through R are
6868 implemented by the University on behalf of the College, but the College shall not receive any additional
6869 independent financial or operational authority as a result of this Management Agreement or the
6870 attached Board of Visitors policies beyond the independent financial and operational authority that it
6871 had prior to the effective date of this Management Agreement or that it may be granted by law in the
6872 future.

6873 SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, the University
6874 shall be governed and administered in the manner provided not only in this Management Agreement, but
6875 also as provided in the Appropriation Act then in effect and the University's Enabling Legislation.

6876 SECTION 2.4.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant
6877 to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is
6878 a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act,
6879 or this Management Agreement, or the Board of Visitors policies attached to this Management
6880 Agreement as Exhibits M through R, the provisions of the Appropriation Act shall control, and shall
6881 continue to control unless provided otherwise by law.

6882 SECTION 2.4.2. The University's Enabling Legislation. As provided in subsection C of § 23-38.91 of
6883 the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University's
6884 Enabling Legislation, the Enabling Legislation shall control, except as provided in subsection A.1.b of
6885 § 23-38.112 of the Act regarding § 23-77.1.

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 University 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, 23-2.1:1, 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 University 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 University 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 University 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 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 substantial and material change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R 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 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] 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

6947 compliance with this Management Agreement or the requirements of the Act, the Governor may void this
 6948 Management Agreement. Upon the Governor voiding this Management Agreement, the University shall
 6949 no longer be allowed to exercise any restructured financial or operational authority pursuant to the
 6950 provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent
 6951 management agreement with the Secretary or Secretaries designated by the Governor or the voided
 6952 Management Agreement is reinstated by the General Assembly.

6953 SECTION 3.2.2. General Assembly. As provided in subsection D 4 of § 23-38.88 of the Act, the
 6954 General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to
 6955 § 23-38.98 of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the
 6956 Act may be revoked by an act of the General Assembly (i) if the University fails to meet the
 6957 requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this
 6958 Management Agreement.

6959 ARTICLE 4. GENERAL PROVISIONS.

6960 SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied,
 6961 shall be construed as conferring any third-party beneficiary status on any person or entity.

6962 SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § 23-38.88 of the Act, the
 6963 University and the members of its Board of Visitors, officers, directors, employees, and agents shall be
 6964 entitled to the same sovereign immunity to which they would be entitled if the University were not
 6965 governed by the Act; provided that the Virginia Tort Claims Act, § 8.01-195.1 et seq. of the Code of
 6966 Virginia, and its limitations on recoveries shall remain applicable with respect to the University.

6967 SECTION 4.3. Term of Agreement [÷ Authority to Renew.— This Management Agreement shall
 6968 remain in effect for a period of three years from its effective date.— Pursuant to subsection D 3 of
 6969 § 23-38.88 of the Act, the Commonwealth and the University may by mutual agreement renew this
 6970 Agreement for successive five-year periods, or may enter into a new management agreement.— If after its
 6971 initial three-year term, or a successive five-year term if it is renewed by the parties, this Management
 6972 Agreement is not renewed or a new agreement executed prior to the expiration of the three-year or
 6973 five-year term, as applicable, this Management Agreement shall remain in effect on a provisional basis
 6974 for a period of one year.— If, after the expiration of the provisional one-year period, this Management
 6975 Agreement has not been renewed or a new agreement executed, the University shall no longer be
 6976 granted any of the financial or operational authority set forth in Subchapter 3 of the Act, unless and
 6977 until such time as a new management agreement is entered into between the University and the
 6978 Commonwealth. . This Management Agreement shall expire at midnight on June 30, 2010.]

6979 WHEREFORE, the foregoing Management Agreement has been executed [by the undersigned as of
 6980 this 15th day of November, 2005, and shall become effective on the effective date of the Appropriation
 6981 Act or amendments to an Appropriation Act enacted by the General Assembly containing a
 6982 recommendation for its approval as of this 15th day of November, 2005, and shall become effective on
 6983 the effective date of legislation enacted into law providing for the terms of such Agreement] .

6984

6985

6986

6987

6988

6989

6990

6991

6992

6993

6994

6995

6996

6997

6998

6999

7000

7001

7002

7003

7004

7005

7006

7007

7008

EXHIBIT M

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 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 Medical Center.

"Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.

"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.

"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.

"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 the Medical Center.

III. SCOPE OF POLICY.

7070 *This Policy applies to the planning and budget development for capital projects, capital project*
7071 *authorization, and the implementation of capital projects, whether funded by a general fund*
7072 *appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other*
7073 *sources.*

7074 *This Policy provides guidance for 1) the process for developing one or more capital project*
7075 *programs for the University, 2) authorization of new capital projects, 3) procurement of Capital*
7076 *Professional Services and construction services, 4) design reviews and code approvals for capital*
7077 *projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land*
7078 *acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting*
7079 *requirements.*

7080 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

7081 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*
7082 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*
7083 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*
7084 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*
7085 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*
7086 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*
7087 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*
7088 *and procedures.*

7089 **V. CAPITAL PROGRAM.**

7090 *The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt*
7091 *a system for developing one or more capital project programs that defines or define the capital needs of*
7092 *the University for a given period of time consistent with the University's published Master Plan. This*
7093 *process may or may not mirror the Commonwealth's requirements for capital plans. The Board of*
7094 *Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be*
7095 *funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from*
7096 *State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board*
7097 *may approve amendments to the program for Major Capital Projects annually or more often if*
7098 *circumstances warrant.*

7099 *It shall be University policy that each capital project program shall meet the University's mission*
7100 *and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be*
7101 *University policy that each capital project shall be of a size and scope to provide for the defined*
7102 *program needs, designed in accordance with all applicable building codes and handicapped accessibility*
7103 *standards as well as the University's design guidelines and standards, and costed to reflect current costs*
7104 *and escalated to the mid-point of anticipated construction.*

7105 **VI. AUTHORIZATION OF CAPITAL PROJECTS**

7106 *The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its*
7107 *size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief*
7108 *Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other*
7109 *capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund*
7110 *appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both*
7111 *Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies*
7112 *then applicable, and shall follow the State's process for capital budget requests.*

7113 *It shall be the policy of the University that the implementation of capital projects shall be carried*
7114 *out so that the capital project as completed is the capital project approved by the Board for Major*
7115 *Capital Projects and according to the procedures adopted by the President, acting through the*
7116 *Executive Vice President and Chief Operating Officer, for all other capital projects. The President,*
7117 *acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence*
7118 *to this requirement.*

7119 *Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond*
7120 *the plans and justifications that were the basis for the capital project's approval, either before or during*
7121 *construction, unless approved in advance as described above. Minor changes shall be permissible if*
7122 *they are determined by the President, acting through the Executive Vice President and Chief Operating*
7123 *Officer, to be justified.*

7124 *Major Capital Projects may be submitted for Board of Visitors authorization at any time but must*
7125 *include a statement of urgency if not part of the approved Major Capital Project program.*

7126 **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION**
7127 **SERVICES.**

7128 *It shall be the policy of the University that procurements shall result in the purchase of high quality*
7129 *services and construction at reasonable prices and shall be consistent with the Policy Governing the*
7130 *Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials*
7131 *adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and*

7132 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed
7133 to:

7134 Seeking competition to the maximum practical degree, taking into account the size of the anticipated
7135 procurement, the term of the resulting contract and the likely extent of competition;

7136 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the
7137 appearance of any impropriety prohibited by State law or University policy;

7138 Making procurement rules clear in advance of any competition;

7139 Providing access to the University's business to all qualified vendors, firms and contractors, with no
7140 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage
7141 in cooperative procurements and to meet special needs of the University;

7142 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
7143 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
7144 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
7145 necessary to the contractor's normal operations;

7146 Providing for a non-discriminatory procurement process, and including appropriate and lawful
7147 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small
7148 businesses and to promote and encourage a diversity of suppliers.

7149 The President, acting through the Executive Vice President and Chief Operating Officer, is
7150 authorized to develop implementing procedures for the procurement of Capital Professional Services and
7151 construction services at the University. The procedures shall implement this Policy and provide for:

7152 A system of competitive negotiation for Capital Professional Services, including a procedure for
7153 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,
7154 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of
7155 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

7156 A prequalification procedure for contractors or products;

7157 A procedure for special construction contracting methods, including but not limited to design-build
7158 and construction management contracts; and

7159 A prompt payment procedure.

7160 The University also may enter into cooperative arrangements with other private or public health or
7161 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,
7162 in the judgment of the University, the purposes of this Policy will be furthered.

7163 VIII. DESIGN REVIEWS AND CODE APPROVALS.

7164 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final
7165 Major Capital Project authorization based on the size, scope and cost estimate provided with the
7166 design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall
7167 be required. For all capital projects other than Major Capital Projects, the President, acting through
7168 the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and
7169 project authorization based on the size, scope and cost estimate provided with the design. It shall be
7170 the University's policy that all capital projects shall be designed and constructed in accordance with
7171 applicable Virginia Uniform Statewide Building Code ("VUSBC") standards and the applicable
7172 accessibility code.

7173 The President, acting through the Executive Vice President and Chief Operating Officer, shall
7174 designate a Building Official responsible for building code compliance by either (i) hiring an individual
7175 to be the University Building Official, or (ii) continuing to use the services of the Department of
7176 General Services, Division of Engineering and Buildings, to perform the Building Official function. If
7177 option (i) is selected, the individual hired as the University Building Official shall be a full-time
7178 employee, a registered professional architect or engineer, and certified by the Department of Housing
7179 and Community Development to perform this Building Official function. The University Building Official
7180 shall issue building permits for each capital project required by the VUSBC to have a building permit,
7181 and shall determine the suitability for occupancy of, and shall issue certifications for building
7182 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification,
7183 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital
7184 project and that such capital project has been inspected by the State Fire Marshal or his designee.
7185 When serving as the University Building Official, such individual shall [organizationally] report
7186 directly and exclusively to the Board of Visitors. If the University hires its own University Building
7187 Official, it shall fulfill the code review requirement [by:

7188 A. ~~Maintaining~~ by maintaining] a review unit supported by resources and staff who are certified by
7189 the Department of Housing and Community Development in accordance with § 36-137 of the Code of
7190 Virginia for such purpose and who shall review plans, specifications and documents for compliance with
7191 building codes and standards and perform required inspections of work in progress and the completed
7192 capital project. No individual licensed professional architect or engineer hired or contracted with to

7193 perform these functions shall also perform other building code-related design, construction,
7194 facilities-related project management or facilities management functions for the University on the same
7195 capital project [÷ ✕

7196 *B. Using the services of the Department of General Services, Division of Engineering and Buildings,*
7197 *to perform the building code review duties as described above. .]*

7198 **IX. ENVIRONMENTAL IMPACT REPORTS.**

7199 It shall be the policy of the University to assess the environmental, historic preservation, and
7200 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
7201 to the extent practicable. The University shall develop a procedure for the preparation and approval of
7202 environmental impact reports for capital projects, in accordance with State environmental, historic
7203 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
7204 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
7205 \$300,000 or more.

7206 **X. BUILDING DEMOLITIONS.**

7207 It shall be the policy of the University to consider the environmental and historical aspects of any
7208 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.
7209 The University shall develop a procedure for the preparation and review of demolition requests,
7210 including any necessary reviews by the Department of Historic Resources and the Art and Architectural
7211 Review Board in accordance with State historic preservation requirements generally applicable to
7212 capital projects in the Commonwealth. Further, for any property that was acquired or constructed with
7213 funding from a general fund appropriation of the General Assembly or from proceeds from State Tax
7214 Supported Debt, general laws applicable to State owned property shall apply.

7215 **XI. BUILDING OR LAND ACQUISITIONS.**

7216 It is the policy of the University that capital projects involving building or land acquisition shall be
7217 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real
7218 property. The President, acting through the Executive Vice President and Chief Operating Officer, shall
7219 ensure that the project management system implemented pursuant to Section XIII below provides for a
7220 review and analysis of all pertinent matters relating to the acquisition of buildings and land as any
7221 prudent purchaser would perform to the end that any building or land acquired by the University shall
7222 be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability
7223 to the University and that the cost of the real property to be acquired, together with any contemplated
7224 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is
7225 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating
7226 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies
7227 pertaining to the acquisition of buildings or land for capital projects are carried out.

7228 **A. Environmental and Land Use Considerations.**

7229 It is the policy of the University to reasonably cooperate with each locality affected by the
7230 acquisition. Such cooperation shall include but not be limited to furnishing any information that the
7231 locality may reasonably request and reviewing any requests by the locality with regard to any such
7232 acquisition. The University shall consider the zoning and comprehensive plan designation by the
7233 locality of the building or land and surrounding parcels, as well as any designation by State or federal
7234 agencies of historically or archeologically significant areas on the land. Nothing herein shall be
7235 construed as requiring the University to comply with local zoning laws and ordinances.

7236 **B. Infrastructure and Site Condition.**

7237 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
7238 that, in the case of capital projects involving the acquisition of buildings or land, the project
7239 management systems implemented under Section XIII below provide for a review of the following
7240 matters prior to acquisition of the building or land: that any land can be developed for its intended
7241 purpose without extraordinary cost; that an environmental engineer has been engaged by the University
7242 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular
7243 ingress and egress to serve the contemplated use of the building or land; that utilities and other services
7244 to the land are adequate or can reasonably be provided or have been provided in the case of building
7245 acquisitions; and that the condition and grade of the soils have been examined to determine if any
7246 conditions exist that would require extraordinary site work or foundation systems.

7247 **C. Title and Survey.**

7248 A survey shall be prepared for any real property acquired, and an examination of title to the real
7249 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title
7250 insurance shall be procured from a title insurance company authorized to do business in the
7251 Commonwealth. Based upon the survey and title examination or report, the President, acting through
7252 the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real
7253 property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens,
7254 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 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

ENGROSSED

SB675E

7316 of Property for certain leases entered into by the University, which was amended in 2003 as the Policy
7317 Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The
7318 Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10
7319 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered
7320 Institution, the University of Virginia may have the authority to establish its own system for the leasing
7321 of [~~property, both real and personal~~ real property] . The University's system for implementing this
7322 authority is to be governed by policies adopted by the Board of Visitors. The following provisions of
7323 this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered
7324 into by the University.

7325 This Policy is intended to cover the authority that may be granted to the University pursuant to
7326 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
7327 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
7328 and the University's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this
7329 Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center
7330 by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act,
7331 are not affected by this Policy.

7332 II. DEFINITIONS.

7333 The following words and terms, when used in this Policy, shall have the following meaning unless
7334 the context clearly indicates otherwise:

7335 "Academic Division" means that part of the University known as State Agency 207.

7336 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
7337 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7338 "Board of Visitors" means the Rector and Visitors of the University of Virginia.

7339 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting
7340 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

7341 "College" means that part of the University operated as the University of Virginia's College at Wise,
7342 also known as State Agency 246.

7343 "Covered Institution" means a public institution of higher education of the Commonwealth of
7344 Virginia that has entered into a Management Agreement with the Commonwealth to be governed by
7345 Subchapter 3 of the Act.

7346 "Expense Lease" means an Operating Lease of real property under the control of another entity to
7347 the University.

7348 "Income Lease" means an Operating Lease of real property under the control of the University to
7349 another entity.

7350 "Lease" or "Leases" means any type of lease involving real property.

7351 "Medical Center" means that part of the University consisting of the University of Virginia Medical
7352 Center, known as State Agency 209, and related health care and health maintenance facilities.

7353 "Operating Lease" means any lease involving real property, or improvements thereon, that is not a
7354 Capital Lease.

7355 "University" means the University of Virginia, consisting of the Academic Division, the College, and
7356 the Medical Center.

7357 III. SCOPE OF POLICY.

7358 This Policy provides guidance for the implementation of all University Leases.

7359 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

7360 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
7361 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
7362 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
7363 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
7364 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
7365 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
7366 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
7367 and procedures.

7368 V. REQUIREMENTS FOR LEASES.

7369 A. Factors to Be Considered When Entering into Leases.

7370 All Leases shall be for a purpose consistent with the mission of the University. The decision to enter
7371 into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy,
7372 consideration of all costs of occupancy, and a determination that the use of the property to be leased is
7373 necessary and is efficiently planned. Leases shall also conform to the space planning procedures that
7374 may be adopted by the President, acting through the Executive Vice President and Chief Operating
7375 Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the
7376 space is intended.

7377 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 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.

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 the University of Virginia is authorized to adopt this Information Technology Policy pursuant to § 23-38.111 of the Code of Virginia.

7439 II. DEFINITIONS.

7440 As used in this Information Technology Policy, the following terms have the following meanings,
7441 unless the context requires otherwise:

7442 "Academic Division" means that part of the University known as State Agency 207.

7443 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
7444 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7445 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

7446 "College" means that part of the University operated as the University of Virginia's College at Wise,
7447 also known as State Agency 246.

7448 "Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the
7449 Code of Virginia as it currently exists and from time to time may be amended.

7450 "Major information technology project" or "major IT project" shall have the same meaning as set
7451 forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

7452 "Medical Center" means that part of the University consisting of the University of Virginia Medical
7453 Center, known as State Agency 209, and related health care and health maintenance facilities.

7454 "Policy" means this Information Technology Policy adopted by the Board of Visitors.

7455 "State Chief Information Officer" or "State CIO" means the Chief Information Officer of the
7456 Commonwealth of Virginia.

7457 "University" means the University of Virginia, consisting of the Academic Division, the College, and
7458 the Medical Center.

7459 III. SCOPE OF POLICY.

7460 This Policy is intended to cover and implement the authority that may be granted to the University of
7461 Virginia pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect
7462 any other powers and authorities granted to the University pursuant to the Appropriation Act and the
7463 Code of Virginia, including other provisions of the Act or the University's enabling legislation as that
7464 term is defined in § 23-38.89 of the Act. In particular, other powers and authorities granted to the
7465 University of Virginia Medical Center by law, to the extent they exceed those granted to the University
7466 pursuant to Subchapter 3 of the Act, are not affected by this Policy.

7467 This Policy shall govern the University's information technology strategic planning, expenditure
7468 reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and
7469 audits conducted within, by, or on behalf of the University. Upon the effective date of a Management
7470 Agreement between the Commonwealth and the University, as authorized by subsection D of § 23-38.88
7471 and § 23-38.111, therefore, the University shall be exempt from those provisions of the Code of Virginia,
7472 including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies
7473 Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24
7474 of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology
7475 strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture,
7476 ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided,
7477 however, that the University still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et
7478 seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information
7479 Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to
7480 public institutions of higher education of the Commonwealth and that do not govern information
7481 technology strategic planning, expenditure reporting, budgeting, project management, infrastructure,
7482 architecture, ongoing operations, security, and audits within, by, or on behalf of the University.

7483 The procurement of information technology and telecommunications goods and services, including
7484 automated data processing hardware and software, shall be governed by the Policy Governing the
7485 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials
7486 approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and
7487 Construction that are incorporated in and attached to that Policy.

7488 IV. GENERAL PROVISIONS.**7489 A. Board of Visitors Accountability and Delegation of Authority.**

7490 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
7491 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
7492 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
7493 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
7494 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
7495 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
7496 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
7497 and procedures.

7498 B. Strategic Planning.

7499 The President, acting through the Executive Vice President and Chief Operating Officer, shall be
7500 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 Executive Vice President and Chief Operating 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 Executive Vice President and Chief Operating Officer, 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 revised from time to time.

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

The President, acting through the Executive Vice President and Chief Operating Officer, shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.

The University 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 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

7562 *Technology Investment Board.*

7563 *The President, acting through the executive Vice President and Chief Operating Officer, shall be*
7564 *responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended*
7565 *and revised from time to time.*

7566 *For purposes of implementing this Policy, the President shall appoint an existing University*
7567 *employee to serve as a liaison between the University and the State CIO.*

7568 *F. Audits.*

7569 *Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines*
7570 *developed by the Commonwealth or those based upon industry best practices for project auditing as*
7571 *defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing*
7572 *association, appropriately tailored to the specific circumstances of the University, which provide for*
7573 *Independent Validation and Verification ("IV&V") of the University's major IT projects. Copies of the*
7574 *policies, standards, and guidelines, as amended and revised from time to time, shall be made available*
7575 *to the Information Technology Investment Board.*

7576 *Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure,*
7577 *architecture, ongoing operations, and security, shall also be the responsibility of the University's*
7578 *Internal Audit Department and the Auditor of Public Accounts.*

7579

7580

EXHIBIT P

7581

7582

7583

MANAGEMENT AGREEMENT

7584

BETWEEN

7585

THE COMMONWEALTH OF VIRGINIA

7586

AND

7587

THE UNIVERSITY OF VIRGINIA

7588

PURSUANT TO

7589

THE RESTRUCTURED HIGHER EDUCATION

7590

FINANCIAL AND ADMINISTRATIVE OPERATIONS

7591

ACT OF 2005

7592

7593

7594

POLICY GOVERNING

7595

THE PROCUREMENT OF GOODS, SERVICES,

7596

INSURANCE, AND CONSTRUCTION AND

7597

THE DISPOSITION OF SURPLUS MATERIALS

7598

7599

7600

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

7601

POLICY GOVERNING THE PROCUREMENT OF

7602

GOODS, SERVICES, INSURANCE AND CONSTRUCTION

7603

AND THE DISPOSITION OF SURPLUS MATERIALS

7604

I. PREAMBLE.

7605

7606 *A. Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389,*
7607 *respectively) provided the University of Virginia with autonomy to conduct the procurement of goods*
7608 *and services, including professional services, and construction, on behalf of the University of Virginia*
7609 *Medical Center. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing*
7610 *Exercise of Procurement Autonomy by the University on behalf of the Medical Center. Subchapter 3 of*
7611 *the Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter*
7612 *4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that the University of Virginia,*
7613 *upon becoming a Covered Institution, shall be authorized to establish its own system for the*
7614 *procurement of goods, services, insurance, and construction, and for the independent disposition of*
7615 *surplus materials by public or private transaction.*

7616 *B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of*
7617 *Visitors for the procurement of goods, services, insurance, and construction, and the disposition of*
7618 *surplus materials. The provisions of this Policy set forth below, together with the Rules Governing*
7619 *Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1,*
7620 *constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods,*
7621 *services, insurance, and construction, and the disposition of surplus materials by the University.*

7622 *C. This Policy is intended to cover the authority that may be granted to the University pursuant to*
7623 *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. 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 (§ 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 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 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, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.

"Existing Medical Center Policy Statement" means the Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center adopted in 1996 by the Board of Visitors for the Medical Center.

"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 University 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.

"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 the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

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, 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.

IV. GENERAL PROVISIONS.

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

The Academic Division and the College, through its administrative relationship with the University, 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

7685 and the College, as well as a surplus materials disposition system for the University as a whole, and to
7686 continue the existing procurement system and policies of the Medical Center. Any University electronic
7687 procurement system, other than the Medical Center's electronic procurement system, shall integrate or
7688 interface with the Commonwealth's electronic procurement system.

7689 This Policy shall be effective on the Effective Date of the University's initial Management Agreement
7690 with the Commonwealth. The implementing policies and procedures adopted by the President, acting
7691 through the Executive Vice President and Chief Operating Officer or his designee, to implement this
7692 Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting
7693 procurements at the University, including policies regarding the nature and amounts of procurements
7694 that may be undertaken without the approval of the Board of Visitors, or of the President, acting
7695 through the Executive Vice President and Chief Operating Officer.

7696 B. Scope and Purpose of University Procurement Policies.

7697 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be
7698 the policy of the University that procurements conducted by the University result in the purchase of high
7699 quality goods and services at reasonable prices, and that the University be free, to the maximum extent
7700 permitted by law and this Policy, from constraining policies that hinder the ability of the University to
7701 do business in a competitive environment. This Policy, together with the Rules Governing Procurement
7702 of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to
7703 all procurements undertaken by the University, regardless of the source of funds.

7704 C. Collaboration, Communication, and Cooperation with the Commonwealth.

7705 The University is committed to developing, maintaining, and sustaining collaboration,
7706 communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy,
7707 particularly with the Offices of the Secretaries of Administration and Technology, the Department of
7708 General Services, and the Virginia Information Technologies Agency. Identifying business objectives and
7709 goals common to both the University and the Commonwealth and the mechanisms by which such
7710 objectives and goals may be jointly pursued and achieved are among the desired outcomes of such
7711 collaboration, communication, and cooperation.

7712 D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.

7713 The University is committed to maximizing its internal operational efficiencies, economies of scale
7714 among institutions of higher education, and the leveraged buying power of the Commonwealth as a
7715 whole.

7716 Consistent with this commitment, the University:

7717 i) may purchase from and participate in all statewide contracts for goods and services, including
7718 information technology goods and services, except that the University shall purchase from and
7719 participate in contracts for communications services and telecommunications facilities entered into by
7720 the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an
7721 exception is provided in the Appropriation Act or by other law, and provided that orders not placed
7722 through statewide contracts shall be processed directly or by integration or interface through the
7723 Commonwealth's electronic procurement system;

7724 ii) shall use directly or by integration or interface the Commonwealth's electronic procurement
7725 system and comply with the business plan for the Commonwealth's electronic procurement system, as
7726 modified by an agreement between the Commonwealth and the University [~~attached to this Policy as~~
7727 ~~Attachment 1~~ , which agreement shall not be substantially different than the agreement attached to this
7728 Policy as Attachment 2] ; and

7729 iii) shall adopt a small, woman-owned, and minority-owned ("SWAM") business program that is
7730 consistent with the Commonwealth's SWAM program.

7731 E. Implementation.

7732 To effect its implementation under the Act, and if the University remains in continued substantial
7733 compliance with the terms and conditions of this Management Agreement with the Commonwealth
7734 pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the University's
7735 procurement of goods, services, insurance, and construction, and the disposition of surplus materials
7736 shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2,
7737 except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information
7738 Technologies Agency, Chapter 20.1 (§ 2.2-2005 et. seq.) of Title 2.2, and the Information Technology
7739 Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency
7740 requirements regarding disposition of surplus materials and distribution of proceeds from the sale or
7741 recycling of surplus materials in §§ 2.2-1124 and 1125; the requirement to purchase from the
7742 Department for the Blind and Vision Impaired ("VIB") (§ 2.2-1117); and any other state statutes, rules,
7743 regulations or requirements relating to the procurement of goods, services, insurance, and construction,
7744 including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the
7745 duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department
7746 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:

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 an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;

making procurement rules clear in advance of any competition;

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;

ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and

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

The University shall maintain an ongoing program to provide professional development opportunities 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

7808 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title
7809 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31
7810 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et
7811 seq.) of Chapter 12 of Title 18.2.

7812 VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

7813 The policy and procedures for disposal for surplus materials shall provide for the sale,
7814 environmentally-appropriate disposal, or recycling of surplus materials by the University and the
7815 retention of the resulting proceeds by the University.

7816 VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND
7817 PROCEDURES.

7818 The President, acting through the Executive Vice President and Chief Operating Officer or his
7819 designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures
7820 for the Academic Division and the College, which, in addition to the Rules, implement applicable
7821 provisions of law and this Policy. University procurements shall be carried out in accordance with this
7822 Policy, the Rules, and any implementing policies and procedures adopted by the University. The
7823 implementing policies and procedures (i) shall include the delegation of procurement authority by the
7824 Board to appropriate University officials who shall oversee University procurements of goods, services,
7825 insurance, and construction, including a grant of authority to such officials to engage in further
7826 delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the
7827 competitive principles set forth in Part V above.

7828 Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall
7829 become effective on the Effective Date of the University's initial Management Agreement with the
7830 Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the
7831 University on behalf of the University for goods, services, insurance, and construction. This Policy, the
7832 Rules, and any implementing policies and procedures adopted by the University shall not affect existing
7833 contracts already in effect.

7834 The Rules and University implementing policies and procedures for all University procurements of
7835 goods, services, insurance, and construction, and the disposition of surplus property shall be
7836 substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of
7837 Higher Education and their Vendors in their form as of the effective date of this Policy and as amended
7838 or changed in the future, and with University procedures specific to the Acquisition of Goods and
7839 Services. The Rules and University implementing policies and procedures shall implement a system of
7840 competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including
7841 professional services as defined in the Rules, insurance, and construction.

7842 VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

7843 A. Protests, Appeals and Debarment.

7844 The Rules and University implementing policies and procedures for procurements other than capital
7845 outlay shall include a process or processes for an administrative appeal by vendors, firms or
7846 contractors. Protests and appeals may challenge determinations of vendor, firm or contractor
7847 non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are
7848 filed within the times specified by the Rules. Remedies available shall be limited to reversal of the
7849 action challenged or, where a contract already being performed is declared void, compensation for the
7850 cost of performance up to the time of such declaration. The Rules and University implementing policies
7851 and procedures also may establish the basis and process for debarment of any vendor, firm or
7852 contractor.

7853 B. Prompt Payment of Contractors and Subcontractors.

7854 The Rules and University implementing policies and procedures shall include provisions related to
7855 prompt payment of outstanding invoices, which shall include payment of interest on properly-presented
7856 invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the
7857 lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The
7858 payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or
7859 the date established by the contract. All contracts also shall require prompt payment of subcontractors
7860 by the general contractor, upon receipt of payment by the University.

7861 C. Types of Procurements.

7862 The Rules and University implementing policies and procedures shall implement a system of
7863 competitive negotiation for professional services, as defined in the Rules, and shall implement
7864 purchasing procedures developed to maximize competition given the size and duration of the contract,
7865 and the needs of the University. Such policies and procedures may include special provisions for
7866 procurements such as emergency procurements, sole source procurements, brand name procurements,
7867 small purchases, procurements in which only one qualified vendor responds, and others.

7868 D. Approval and Public Notice of Procurements

7869 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 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 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.

§ 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

7931 general partnership interest shall be deemed to be a voting security.

7932 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
7933 and various elements of required services that in total are optimal relative to the Institution's needs.

7934 "Business" means any type of corporation, partnership, limited liability company, association, or sole
7935 proprietorship operated for profit.

7936 "Competitive negotiation" is a method of contractor selection that includes the following elements:

7937 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
7938 procured, specifying the factors that will be used in evaluating the proposal and containing or
7939 incorporating by reference the other applicable contractual terms and conditions, including any unique
7940 capabilities or qualifications that will be required of the contractor.

7941 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
7942 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
7943 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
7944 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
7945 also shall be published on the Department of General Services' central electronic procurement website
7946 and may be published on other appropriate websites. In addition, proposals may be solicited directly
7947 from potential contractors.

7948 3. a. Procurement of professional services. The procurement of professional services for capital
7949 projects shall be conducted using a qualification-based selection process. The Institution shall engage
7950 in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on
7951 the basis of initial responses and with emphasis on professional competence, to provide the required
7952 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
7953 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed
7954 project, as well as alternative concepts. The Request for Proposal shall not, however, request that
7955 offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may
7956 discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and
7957 where appropriate, nonbinding estimates of price for services. Proprietary information from competing
7958 offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined
7959 in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all
7960 information developed in the selection process to this point, the Institution shall select in the order of
7961 preference two or more offerors whose professional qualifications and proposed services are deemed
7962 most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a
7963 contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair
7964 and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror
7965 ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and
7966 so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution
7967 determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror
7968 is clearly more highly qualified and suitable than the others under consideration, a contract may be
7969 negotiated and awarded to that offeror.

7970 A contract for architectural or professional engineering services relating to construction projects may
7971 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience
7972 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under
7973 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of
7974 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the
7975 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set
7976 in the Request for Proposal. Any unused amounts from any contract term may be carried forward.
7977 Competitive negotiations for such contracts may result in awards to more than one offeror provided the
7978 Request for Proposal stated the potential for a multi-vendor award.

7979 Multiphase professional services contracts satisfactory and advantageous to the Institution for
7980 environmental, location, design and inspection work regarding construction of infrastructure projects
7981 may be negotiated and awarded based on qualifications at a fair and reasonable price for the first
7982 phase only, when completion of the earlier phases is necessary to provide information critical to the
7983 negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such
7984 contract, the Institution shall state the anticipated intended total scope of the project and determine in
7985 writing that the nature of the work is such that the best interests of such Institution require awarding
7986 the contract.

7987 b. Procurement of other than professional services. Selection shall be made of two or more offerors
7988 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the
7989 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
7990 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered,
7991 but need not be the sole determining factor. After negotiations have been conducted with each offeror
7992 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 been procured through competitive sealed bidding or competitive negotiation.

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

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some

sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.

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

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform 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.

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

8177 *from the consequences of an error in its bid or offer.*

8178 *B. The Institution may extend the term of an existing contract for services to allow completion of*
8179 *any work undertaken but not completed during the original term of the contract.*

8180 *C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract*
8181 *modifications.*

8182 *§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -*

8183 *A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder*
8184 *or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis*
8185 *prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the*
8186 *Institution shall include businesses selected from a list made available by the Department of Minority*
8187 *Business Enterprise.*

8188 *B. The Institution shall establish programs consistent with this section to facilitate the participation*
8189 *of small businesses and businesses owned by women and minorities in procurement transactions. The*
8190 *programs established shall be in writing and shall include cooperation with the Department of Minority*
8191 *Business Enterprise, the United States Small Business Administration, and other public or private*
8192 *agencies. The Institution shall submit annual progress reports on minority business procurement to the*
8193 *Department of Minority Business Enterprise.*

8194 *C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive*
8195 *analysis that documents a statistically significant disparity between the availability and utilization of*
8196 *women- and minority-owned businesses, the Governor is by law authorized and encouraged to require*
8197 *the Institution to implement appropriate enhancement or remedial measures consistent with prevailing*
8198 *law.*

8199 *D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder*
8200 *or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination*
8201 *that employing ex-offenders on the specific contract is not in its best interest.*

8202 *§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The*
8203 *Institution shall include in every contract of more than \$10,000 the following provisions:*

8204 *1. During the performance of this contract, the contractor agrees as follows:*

8205 *a. The contractor will not discriminate against any employee or applicant for employment because*
8206 *of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law*
8207 *relating to discrimination in employment, except where there is a bona fide occupational qualification*
8208 *reasonably necessary to the normal operation of the contractor. The contractor agrees to post in*
8209 *conspicuous places, available to employees and applicants for employment, notices setting forth the*
8210 *provisions of this nondiscrimination clause.*

8211 *b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the*
8212 *contractor, will state that such contractor is an equal opportunity employer.*

8213 *c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation*
8214 *shall be deemed sufficient for the purpose of meeting the requirements of this section.*

8215 *2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every*
8216 *subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each*
8217 *subcontractor or vendor.*

8218 *§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The*
8219 *Institution shall include in every contract over \$10,000 the following provisions:*

8220 *During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace*
8221 *for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for*
8222 *employment, a statement notifying employees that the unlawful manufacture, sale, distribution,*
8223 *dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's*
8224 *workplace and specifying the actions that will be taken against employees for violations of such*
8225 *prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the*
8226 *contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the*
8227 *foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be*
8228 *binding upon each subcontractor or vendor.*

8229 *For the purposes of this section, "drug-free workplace" means a site for the "performance of work*
8230 *done in connection with a specific contract awarded to a contractor in accordance with these Rules, the*
8231 *employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,*
8232 *dispensation, possession or use of any controlled substance or marijuana during the performance of the*
8233 *contract.*

8234 *§ 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a*
8235 *certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or*
8236 *manufacturer named and shall be deemed to convey the general style, type, character, and quality of the*
8237 *article desired. Any article that the Institution in its sole discretion determines to be the equal of that*
8238 *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 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

8300 7. The contractor failed to provide to the Institution in a timely manner any information requested
8301 by the Institution relevant to subdivisions 1 through 6 of this subsection.

8302 § 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid
8303 from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest
8304 responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to
8305 obtain a contract price within available funds. However, the negotiation may be undertaken only under
8306 conditions and procedures described in writing and approved by the Institution prior to issuance of the
8307 Invitation to Bid and summarized therein.

8308 § 16. Cancellation, rejection of bids; waiver of informalities. -

8309 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or
8310 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of
8311 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,
8312 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a
8313 particular responsive and responsible bidder or offeror.

8314 B. The Institution may waive informalities in bids.

8315 § 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no
8316 insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus
8317 lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to
8318 the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall
8319 preclude the Institution from debarring a prospective insurer pursuant to § 18.

8320 § 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of
8321 supplies, services, insurance or construction, for specified periods of time. Any debarment procedure
8322 shall be established in writing by the Institution. Any debarment procedure may provide for debarment
8323 on the basis of a contractor's unsatisfactory performance for the Institution.

8324 § 19. Purchase programs for recycled goods; Institution responsibilities. -

8325 A. The Institution may implement a purchase program for recycled goods and may coordinate its
8326 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
8327 the Code of Virginia and §§ 20 and 22 of these Rules.

8328 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets
8329 Development Council, shall advise the Institution concerning the designation of recycled goods.

8330 § 20. Preference for Virginia products with recycled content and for Virginia firms. -

8331 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or
8332 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be
8333 decided by lot.

8334 B. Whenever any bidder is a resident of any other state and such state under its laws allows a
8335 resident contractor of that state a preference, a like preference may be allowed by the Institution to the
8336 lowest responsive and responsible bidder who is a resident of Virginia.

8337 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where
8338 goods are being offered, and existing price preferences have already been taken into account, preference
8339 shall be given to the bidder whose goods contain the greatest amount of recycled content.

8340 § 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract
8341 for coal to be purchased for use in the Institution with state funds, the Institution shall procure using
8342 competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering
8343 coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price
8344 of the low responsive and responsible bidder offering coal mined elsewhere.

8345 § 22. Preference for recycled paper and paper products used by the Institution. -

8346 A. In determining the award of any contract for paper and paper products to be purchased for use
8347 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable
8348 for the purpose intended, so long as the price is not more than ten percent greater than the price of the
8349 low responsive and responsible bidder or offeror offering a product that does not qualify under
8350 subsection B.

8351 B. For purposes of this section, recycled paper and paper products means any paper or paper
8352 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

8353 § 23. Withdrawal of bid due to error. -

8354 A. A bidder for a public construction contract, other than a contract for construction or
8355 maintenance of public highways, may withdraw his bid from consideration if the price bid was
8356 substantially lower than the other bids due solely to a mistake in the bid, provided the bid was
8357 submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and
8358 was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of
8359 work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error
8360 or unintentional omission can be clearly shown by objective evidence drawn from inspection of original
8361 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 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.

8423 § 27. *Public construction contract provisions barring damages for unreasonable delays declared*
8424 *void. -*

8425 A. *Any provision contained in any public construction contract of the Institution that purports to*
8426 *waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable*
8427 *delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the*
8428 *extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to*
8429 *causes within their control shall be void and unenforceable as against public policy.*

8430 B. *Subsection A shall not be construed to render void any provision of a public construction*
8431 *contract awarded by the Institution that:*

8432 1. *Allows the recovery of that portion of delay costs caused by the acts or omissions of the*
8433 *contractor, or its subcontractors, agents or employees;*

8434 2. *Requires notice of any delay by the party claiming the delay;*

8435 3. *Provides for liquidated damages for delay; or*

8436 4. *Provides for arbitration or any other procedure designed to settle contract disputes.*

8437 C. *A contractor making a claim against the Institution for costs or damages due to the alleged*
8438 *delaying of the contractor in the performance of its work under any public construction contract of the*
8439 *Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the*
8440 *Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage*
8441 *shall be equal to the percentage of the contractor's total delay claim that is determined through*
8442 *litigation or arbitration to be false or to have no basis in law or in fact.*

8443 D. *If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of*
8444 *the contractor in the performance of work under any public construction contract for the Institution, it*
8445 *shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to*
8446 *investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution*
8447 *shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is*
8448 *determined through litigation or arbitration to have been made in bad faith.*

8449 § 28. *Bid bonds. -*

8450 A. *Except in cases of emergency, all bids or proposals for construction contracts in excess of*
8451 *\$1,000,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is*
8452 *authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he*
8453 *will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not*
8454 *exceed five percent of the amount bid.*

8455 B. *No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for*
8456 *which the bond was written and the next low bid, or (ii) the face amount of the bid bond.*

8457 C. *Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids*
8458 *or proposals for construction contracts anticipated to be less than \$1,000,000.*

8459 § 29. *Performance and payment bonds. -*

8460 A. *Upon the award by the Institution of any (i) public construction contract exceeding \$1,000,000*
8461 *awarded to any prime contractor or (ii) public construction contract exceeding \$1,000,000 awarded to*
8462 *any prime contractor requiring the performance of labor or the furnishing of materials for buildings,*
8463 *structures or other improvements to real property owned by the Institution, the contractor shall furnish*
8464 *to the Institution the following bonds:*

8465 1. *Except for transportation-related projects, a performance bond in the sum of the contract amount*
8466 *conditioned upon the faithful performance of the contract in strict conformity with the plans,*
8467 *specifications and conditions of the contract. For transportation-related projects, such bond shall be in*
8468 *a form and amount satisfactory to the Institution.*

8469 2. *A payment bond in the sum of the contract amount. The bond shall be for the protection of*
8470 *claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom*
8471 *the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the*
8472 *contract, and shall be conditioned upon the prompt payment for all materials furnished or labor*
8473 *supplied or performed in the furtherance of the work.*

8474 *"Labor or materials" shall include public utility services and reasonable rentals of equipment, but*
8475 *only for periods when the equipment rented is actually used at the site.*

8476 B. *Each of the bonds shall be executed by one or more surety companies selected by the contractor*
8477 *that are authorized to do business in Virginia.*

8478 C. *The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.*

8479 D. *Each of the bonds shall be filed with the Institution, or a designated office or official thereof.*

8480 E. *Nothing in this section shall preclude the Institution from requiring payment or performance*
8481 *bonds for construction contracts below \$1,000,000.*

8482 F. *Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish*
8483 *a payment bond with surety thereon in the sum of the full amount of the contract with such*
8484 *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.

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

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

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

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

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

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

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

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

§ 34. Public inspection of certain records. -

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

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

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

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

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

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et

8546 *seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to*
8547 *or upon submission of the data or other materials, (ii) identify the data or other materials to be*
8548 *protected, and (iii) state the reasons why protection is necessary.*

8549 *§ 35. Exemption for certain transactions. -*

8550 *A. The provisions of these Rules shall not apply to:*

8551 *1. The selection of services related to the management and investment of the Institution's endowment*
8552 *funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be*
8553 *governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by*
8554 *§ 23-76.1.*

8555 *2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the*
8556 *Institution. However, such purchase procedures shall provide for competition where practicable.*

8557 *3. Procurement of any construction or planning and design services for construction by the*
8558 *Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is*
8559 *obligated to conform to procurement procedures that are established by federal statutes or regulations,*
8560 *whether or not those federal procedures are in conformance with the provisions of these Rules.*

8561 *4. The University of Virginia Medical Center.*

8562 *5. The purchase of goods and services by the Institution when such purchases are made under a*
8563 *remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

8564 *B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,*
8565 *the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or*
8566 *regulations not in conformance with the provisions of these Rules, the Institution may comply with such*
8567 *federal requirements, notwithstanding the provisions of these Rules, only upon the written determination*
8568 *of the Institution's President or his designee that acceptance of the grant or contract funds under the*
8569 *applicable conditions is in the public interest. Such determination shall state the specific provision of*
8570 *these Rules in conflict with the conditions of the grant or contract.*

8571 *§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -*

8572 *A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into*
8573 *contracts with faith-based organizations for the purposes described in this section on the same basis as*
8574 *any other nongovernmental source without impairing the religious character of such organization, and*
8575 *without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

8576 *B. For the purposes of this section, "faith-based organization" means a religious organization that is*
8577 *or applies to be a contractor to provide goods or services for programs funded by the block grant*
8578 *provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.*
8579 *104-193.*

8580 *C. The Institution, in procuring goods or services, or in making disbursements pursuant to this*
8581 *section, shall not (i) discriminate against a faith-based organization on the basis of the organization's*
8582 *religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based*
8583 *organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of*
8584 *religious freedom by the recipients of such goods, services, or disbursements.*

8585 *D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and*
8586 *purchase orders prominently display a nondiscrimination statement indicating that it does not*
8587 *discriminate against faith-based organizations.*

8588 *E. A faith-based organization contracting with the Institution (i) shall not discriminate against any*
8589 *recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on*
8590 *the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on*
8591 *the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as*
8592 *other organizations that contract with public bodies to account for the use of the funds provided;*
8593 *however, if the faith-based organization segregates public funds into separate accounts, only the*
8594 *accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in*
8595 *clause (ii) shall be construed to supercede or otherwise override any other applicable state law.*

8596 *F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,*
8597 *P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent*
8598 *for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to*
8599 *expenditures pursuant to contracts, if any, for the services of chaplains.*

8600 *G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization*
8601 *from any opportunity to make a bid or proposal or contract on the grounds that the faith-based*
8602 *organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of*
8603 *a particular religion.*

8604 *H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant*
8605 *to a contract between the Institution and a faith-based organization, objects to the religious character of*
8606 *the faith-based organization from which the individual receives or would receive the goods, services, or*
8607 *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

8669 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

8670 B. Separate payment dates may be specified for contracts under which goods or services are
8671 provided in a series of partial deliveries or executions to the extent that such contract provides for
8672 separate payment for such partial delivery or execution.

8673 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where
8674 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall
8675 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by
8676 the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods
8677 or services.

8678 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made
8679 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these
8680 Rules.

8681 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall
8682 include:

8683 1. A payment clause that obligates the contractor to take one of the two following actions within
8684 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
8685 subcontractor under that contract:

8686 a. Pay the subcontractor for the proportionate share of the total payment received from the
8687 Institution attributable to the work performed by the subcontractor under that contract; or

8688 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of
8689 the subcontractor's payment with the reason for nonpayment.

8690 2. A payment clause that requires (i) individual contractors to provide their social security numbers
8691 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
8692 numbers.

8693 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all
8694 amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor
8695 of payment from the Institution for work performed by the subcontractor under that contract, except for
8696 amounts withheld as allowed in subdivision 1.

8697 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,
8698 interest shall accrue at the rate of one percent per month."

8699 Any such contract awarded shall further require the contractor to include in each of its subcontracts
8700 a provision requiring each subcontractor to include or otherwise be subject to the same payment and
8701 interest requirements with respect to each lower-tier subcontractor.

8702 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment
8703 clause in this section shall not be construed to be an obligation of the Institution. A contract
8704 modification shall not be made for the purpose of providing reimbursement for the interest charge. A
8705 cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

8706 § 46. Interest penalty; exceptions. -

8707 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by
8708 the Institution to a vendor that remain unpaid after seven days following the payment date. However,
8709 nothing in this section shall affect any contract providing for a different rate of interest, or for the
8710 payment of interest in a different manner.

8711 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on
8712 corporate loans (prime rate) at large United States money center commercial banks as reported daily in
8713 the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of
8714 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of
8715 interest established pursuant to § 58.1-1812 of the Code of Virginia.

8716 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed
8717 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of
8718 delivery of goods or services or the accuracy of any invoice received for the goods or services. The
8719 exception from the interest penalty provided by this subsection shall apply only to that portion of a
8720 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of
8721 the disagreement.

8722 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the
8723 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a
8724 contractor from receiving interest on such funds under an approved escrow agreement.

8725 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or
8726 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the
8727 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the
8728 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is
8729 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue
8730 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 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

8792 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in
8793 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or
8794 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the
8795 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or
8796 directed award as provided in subsection A of § 54, or both.

8797 If it is determined that the decision of the Institution was not an honest exercise of discretion, but
8798 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable
8799 state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract
8800 has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

8801 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract
8802 shall proceed under this section, and may not protest the award or proposed award under the
8803 provisions of § 50 of these Rules.

8804 D. Nothing contained in this section shall be construed to require the Institution, when procuring by
8805 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed
8806 to be the most advantageous.

8807 § 50. Protest of award or decision to award. -

8808 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall
8809 submit the protest in writing to the Institution, or an official designated by the Institution, no later than
8810 ten days after the award or the announcement of the decision to award, whichever occurs first. Public
8811 notice of the award or the announcement of the decision to award shall be given by the Institution in
8812 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any
8813 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to
8814 protest the award or decision to award such contract shall submit the protest in the same manner no
8815 later than ten days after posting or publication of the notice of such contract as provided in § 5 of these
8816 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part
8817 upon information contained in public records pertaining to the procurement transaction that are subject
8818 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall
8819 expire ten days after those records are available for inspection by such bidder or offeror under § 34, or
8820 at such later time as provided in this section. No protest shall lie for a claim that the selected bidder
8821 or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the
8822 protest and the relief sought. The Institution or designated official shall issue a decision in writing
8823 within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or
8824 offeror appeals within ten days of receipt of the written decision by invoking administrative procedures
8825 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action
8826 as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the
8827 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of
8828 Alternative Dispute Resolution ("ADR") shall constitute an administrative appeal procedure meeting the
8829 standards of § 55 of these Rules.

8830 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then
8831 the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise
8832 it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary
8833 or capricious, then the sole relief shall be as hereinafter provided.

8834 Where the award has been made but performance has not begun, the performance of the contract
8835 may be enjoined. Where the award has been made and performance has begun, the Institution may
8836 declare the contract void upon a finding that this action is in the best interest of the public. Where a
8837 contract is declared void, the performing contractor shall be compensated for the cost of performance
8838 up to the time of such declaration. In no event shall the performing contractor be entitled to lost
8839 profits.

8840 C. Where the Institution, an official designated by it, or an appeals board determines, after a
8841 hearing held following reasonable notice to all bidders, that there is probable cause to believe that a
8842 decision to award was based on fraud or corruption or on an act in violation of these Rules, the
8843 Institution, designated official or appeals board may enjoin the award of the contract to a particular
8844 bidder.

8845 § 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the
8846 validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be
8847 affected by the fact that a protest or appeal has been filed.

8848 § 52. Stay of award during protest. - An award need not be delayed for the period allowed a bidder
8849 or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing
8850 of a timely legal action as provided in § 54, no further action to award the contract shall be taken
8851 unless there is a written determination that proceeding without delay is necessary to protect the public
8852 interest or unless the bid or offer would expire.

8853 § 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.

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.

8937

8938

8939

8940

8941

8942

8943

8944

8945

8946

8947

8948

8949

8950

8951

8952

8953

8954

8955

8956

8957

8958

8959

8960

8961

8962

8963

8964

8965

8966

8967

8968

8969

8970

8971

8972

8973

8974

8975

8976

[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 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

8977 pay the eVA transaction fees for these orders.

8978 For vendors that agree to accept the eVA terms and conditions, the University will transmit the
8979 appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that
8980 includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager,
8981 e-mail address and phone number." The University agrees that, for these orders, it will resolve any
8982 vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether
8983 such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or
8984 CGI-AMS.

8985 The University further agrees that:

8986 It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution
8987 agreed to by the University and the vendor within 10 business days, unless otherwise agreed on a
8988 case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

8989 It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within
8990 the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

8991 3. In the event the University does not provide resolution notification to the eVA Business Manager
8992 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
8993 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

8994 VII. The University will not require separate vendor registrations as a prerequisite for responding to
8995 University solicitations. The University will participate in an enterprise workgroup to determine the best
8996 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9
8997 information will be supported in eVA in such a way as to provide CoVA verified vendor information to
8998 entities. The University will have the option to receive a subset of vendor related data. Until an
8999 enterprise W-9 process is established, the University will be responsible for collection of W-9
9000 information.

9001 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at
9002 least six (6) months prior to change or as soon as any new plan is proposed) with the University
9003 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that
9004 may affect the technical changes described herein.

9005 IX. Integration of the University's electronic procurement solution with the University's ERP is the
9006 responsibility of the University. The solution must provide for orders, change orders and cancellations.

9007 Guidelines

9008 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for
9009 electronic procurement between the University and the CoVA.

9010 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of
9011 8PM and 4AM. eVA will transmit registered vendor orders it receives within fifteen minutes or less.

9012 3. Non-exempt orders to un-registered vendors are to be transmitted to eVA for loading to the Data
9013 Warehouse. The University shall be responsible for payment of all eVA transaction fees for non-exempt
9014 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and
9015 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements
9016 for unregistered vendor orders.

9017 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA
9018 standard format.

9019 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

9020 6. eVA Interface standard does not currently support PCard orders; however these orders may be
9021 processed via the interface as (a) confirming orders or (b) orders for pcards on file with the vendor.

9022 Schedule

9023 The University shall implement this agreement no later than December 2006.

9024 Metrics

9025 A. The University shall comply with the following Governor's eVA Management

9026 Objective

9027 95% of all non-exempt orders to be processed by eVA. Includes non-exempt orders issued by end
9028 users (PCard & LPO) and the central purchasing office. Non-exempt orders to unregistered vendors
9029 received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood
9030 that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory
9031 processing through eVA. All non-exempt orders not processed by eVA shall be reported on the eVA
9032 Dashboard and the corresponding non-use fee paid by the University.

9033 B. The University shall meet the following management objectives for electronic procurement:

9034 1. Provide end users, including purchase-card users, access to an electronic system for buying;

9035 2. Conduct business with eVA registered vendors whenever possible;

9036 3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers
9037 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:

a. 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);

b. 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

c. 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.

Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) grant the University of Virginia authority regarding the adoption of an alternative human resources system and alternative retirement, health care and other insurance plans for University of Virginia Medical Center employees. Further, 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. 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 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.

"Academic Division Human Resources System" means the human resources system for Academic Division employees as provided for herein.

"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 Board of Visitors of the University of Virginia.

"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.

"College" means that part of the University operated as the University of Virginia's College at Wise (State Agency 246).

"College Human Resources System" means the human resources system for College employees as provided for herein.

"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, 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

9161 *University and the Commonwealth.*

9162 *"Existing Medical Center Policy Statement" means the Policy Statement Governing the Exercise of*
9163 *Medical Center Personnel Autonomy adopted by the Board of Visitors in 1996.*

9164 *"Governing Law" means the Act and the University's Enabling Legislation.*

9165 *"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act*
9166 *between the University and the Commonwealth.*

9167 *"Medical Center" means that part of the University consisting of the University of Virginia Medical*
9168 *Center (State Agency 209), and related health care and health maintenance facilities.*

9169 *"Medical Center Human Resources System" means the human resources system for Medical Center*
9170 *employees as provided for herein.*

9171 *"Participating Covered Employee" means (i) all salaried nonfaculty University employees who were*
9172 *employed as of the day prior to the Effective Date of the University's initial Management Agreement*
9173 *with the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be*
9174 *governed by such human resources program or programs, plans, policies, and procedures established by*
9175 *[the Participating Institution], (ii) all salaried nonfaculty University employees who are employed by the*
9176 *University on or after the Effective Date of the initial Management Agreement between the University*
9177 *and the Commonwealth, (iii) all non-salaried nonfaculty University employees without regard to when*
9178 *they were hired, (iv) all faculty University employees without regard to when they were hired, and (v)*
9179 *all employees of the University of Virginia Medical Center without regard to when they were hired.*

9180 *"Systems" mean collectively the Academic Division Human Resources System, the College Human*
9181 *Resources System, and the Medical Center Human Resources System that are in effect from time to time.*

9182 *"University" means the University of Virginia, consisting of the Academic Division, the College, and*
9183 *the Medical Center.*

9184 *"University employee" means a Covered Employee.*

9185 **III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.**

9186 *The University has had human resources system autonomy through decentralization and codified*
9187 *autonomy for its employees for some time. For example, general faculty at the University are expressly*
9188 *exempt from the Virginia Personnel Act. The Academic Division and the College have had*
9189 *decentralization in most human resources functions and activities since the late 1980s and early 1990s,*
9190 *including, but not limited to, the running of payrolls; the administration of hiring, classification, and*
9191 *promotion practices; the administration of separate health insurance and retirement plans. Effective*
9192 *July 1, 1996, all Medical Center employees were exempted from the Virginia Personnel Act and the*
9193 *policies and procedures of the Virginia Department of Human Resource Management (formerly the*
9194 *Department of Personnel and Training). The Board of Visitors approved the Existing Medical Center*
9195 *Policy Statement in 1996. A separate human resources system is in place for all Medical Center*
9196 *employees, which the Board of Visitors hereby continues, recognizing that the human resources needs of*
9197 *the Medical Center differ in certain respects from those of the Academic Division and the College.*

9198 *The Act extends and reinforces the human resources autonomy previously granted to the University.*
9199 *This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and*
9200 *have in place by or after the Effective Date of its initial Management Agreement with the*
9201 *Commonwealth, a human resources system or systems for all University employees in the Academic*
9202 *Division and the College, and to continue the existing human resources system for Medical Center*
9203 *employees. On that Effective Date, and until changed by the University or unless otherwise specified in*
9204 *this Policy, the systems for University employees shall be the same systems applicable to those*
9205 *employees in effect immediately prior to that Effective Date.*

9206 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

9207 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*
9208 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*
9209 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*
9210 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*
9211 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*
9212 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*
9213 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*
9214 *and procedures.*

9215 **V. UNIVERSITY OF VIRGINIA HUMAN RESOURCES SYSTEMS.**

9216 *A. Adoption and Implementation of Academic Division and College Human Resources Systems for*
9217 *the Academic Division and the College; Continuation of Medical Center Human Resources System for*
9218 *the Medical Center.*

9219 *The President, acting through the Executive Vice President and Chief Operating Officer, in*
9220 *consultation with the Vice President and Provost, is hereby authorized to adopt and implement human*
9221 *resources systems for employees of the Academic Division and for employees of the College that*
9222 *implement and are consistent with the Governing Law, other applicable provisions of law, these*

University human resources policies for Academic Division and College employees, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for University personnel, unless Academic Division employees or College employees are exempted from those other human resources policies by law or policy. The University Academic Division and College Human Resources Systems shall include a delegation of personnel authority to appropriate University officials responsible for overseeing and implementing the Academic Division and 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 University and the College commit to regularly engage employees in appropriate discussions and to receive employee input as the new Academic Division and College Human Resources Systems are developed. The University and the College will regularly communicate the details of new proposals to all employees who are eligible to participate in the new Academic Division Human Resources System or 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 University's human resources systems shall consist of the following:

1. the current human resources system for "Academic Division General Faculty" as posted on the Vice President and Provost's web site, <http://www.virginia.edu/provost/index.html>, and periodically amended;

2. the current human resources system for "College General Faculty" as included in the University of Virginia's College at Wise Faculty Handbook 2004-05, as periodically amended;

3. the current human resources system for Classified Employees in the Academic Division and the College as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>, and the University's web site at <http://www.hrs.virginia.edu/policies.html>, as periodically amended;

4. the human resources system for Participating Covered Employees, which shall include non-salaried (wage) employees, as posted on the University Human Resources web site, www.hrs.virginia.edu, and periodically amended; and

5. the current human resources system for Medical Center employees, which shall continue, including the policies and procedures set forth in the University of Virginia Medical Center Human Resources Policies and Procedures Manual, as such Manual may be amended from time to time. The Medical Center Human Resources System is and shall continue to be consistent with Governing Law, other provisions of applicable law, and any other human resources policies adopted by the Board of Visitors for Medical Center employees. All current delegations of authority to University and Medical Center officials who oversee the Medical Center Human Resources System are hereby ratified and continue.

All the systems described above, except the system described in paragraph 3, 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 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, 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 Academic Division and College Human Resources Systems and the Medical Center Human Resources System 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 Academic Division and College Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above, as well as the Medical Center Human Resources System, shall embody the following human resources policies and principles:

A. Election by Academic Division and College Salaried Nonfaculty Employees. Upon the adoption by the University of an Academic Division Human Resources System, or a College Human Resources System, or both, all salaried nonfaculty University employees who were in the employment of the Academic Division or the College, as appropriate, as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth, except employees of the Medical Center, shall be given written notice of their right to elect to participate in and be governed by either (i) the State

9284 human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of
9285 Title 2.2 of the Code of Virginia and administered by the Department of Human Resource Management,
9286 or (ii) the Academic Division Human Resources System or the College Human Resources System, as
9287 appropriate. A salaried nonfaculty University employee who elects to continue to be governed by the
9288 State human resources program described above shall continue to be governed by all State human
9289 resources and benefit plans, programs, policies and procedures that apply to and govern State
9290 employees. A salaried nonfaculty University employee who elects in writing to participate in and be
9291 governed by the Academic Division Human Resources System or the College Human Resources System,
9292 as appropriate, also, by that election, shall be deemed to have elected to be eligible to participate in
9293 and to be governed by the human resources, authorized alternative insurance, and severance plans,
9294 programs, policies and procedures that are or may be adopted by the University as part of that
9295 Academic Division Human Resources System or College Human Resources System, as appropriate.

9296 Each such salaried nonfaculty University employee shall be given at least 90 days to make the
9297 election required by the prior paragraph. Such 90-day period shall begin to run on the date on which
9298 the Academic Division Human Resources System or the College Human Resources System, as
9299 appropriate, becomes effective for that University employee's classification of employees. If such a
9300 salaried nonfaculty University employee does not make an election by the end of that specified election
9301 period, that University employee shall be deemed not to have elected to participate in the Academic
9302 Division Human Resources System or the College Human Resources System, as appropriate. If such a
9303 salaried nonfaculty University employee elects to participate in the Academic Division Human Resources
9304 System or the College Human Resources System, as appropriate, that election shall be irrevocable. At
9305 least every two years, the University shall offer to salaried nonfaculty University employees who have
9306 elected to continue to participate in the state human resources program set forth in Chapters 28
9307 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 an opportunity to elect to participate in the
9308 Academic Division Human Resources System or the College Human Resources System, as appropriate;
9309 provided that, each time prior to offering such opportunity to such salaried nonfaculty University
9310 employees, and at least once every two years after the effective date of the Academic Division Human
9311 Resources System or the College Human Resources System, or both, as appropriate, the University shall
9312 make available to each of its salaried nonfaculty University employees a comparison of its human
9313 resources program for that classification of salaried nonfaculty University employee with the State
9314 human resources program for comparable State employees, including but not limited to a comparability
9315 assessment of compensation and benefits. A copy of the human resources program comparison shall be
9316 provided to the Department of Human Resource Management.

9317 **B. Classification and Compensation.**

9318 **General.** The Systems shall include classification and compensation plans that are fair and
9319 reasonable, and are based on the availability of University financial resources. The plans adopted by
9320 the University for its faculty, Medical Center employees, and other Participating Covered Employees
9321 shall be independent of, and need not be based on, the classification and compensation plans of the
9322 Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the
9323 review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall
9324 provide information on its classification and compensation plans to all University employees. The plans
9325 applicable to Participating Covered Employees and Medical Center employees may or may not include
9326 changes in classification or compensation announced by the Commonwealth depending on such factors
9327 as the availability of necessary financial resources to fund any such changes, and subject to the review
9328 and approval by the Board of Visitors of any major changes in the University's compensation plans.

9329 **Classification Plan.** The Systems shall include one or more classification plans for University
9330 employees that classify positions according to job responsibilities and qualifications. On the Effective
9331 Date of the University's initial Management Agreement with the Commonwealth, and until changed by
9332 the University, the classification plans shall be the same plans that are in effect for each group of
9333 employees immediately prior to that Effective Date.

9334 **Compensation Plan.** The Systems shall include one or more compensation plans for each University
9335 employee classification or group. On the Effective Date of the University's initial Management
9336 Agreement with the Commonwealth, and until changed by the Department of Human Resource
9337 Management, the compensation plan for Classified Employees in the Academic Division and College
9338 shall be the compensation plan in effect immediately prior to that Effective Date, known as the
9339 Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the
9340 University, the compensation plan or plans for all Participating Covered Employees shall be the
9341 compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt
9342 one or more compensation plans for Participating Covered Employees that are non-graded plan(s)
9343 based on internal and external market data and other relevant factors to be determined annually. On
9344 that Effective Date, and until changed by the University, the compensation plan for Medical Center
9345 employees in effect immediately prior to that Effective Date shall continue as the compensation plan for

Medical Center employees. Any major change in compensation plans for Participating Covered Employees or Medical Center employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to University employees shall be authorized and approved only by designated University officers delegated such authority by the University, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.

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

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

Work Schedule and Workweek. The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all University 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, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.

C. Benefits.

The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, and 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 subsections B and C of § 23-38.119 of the Act, the University 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 subsections B 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 University employees. If, however, the University has been or is permitted by law other than the Act to establish an alternative health insurance plan or an alternative faculty or Medical Center retirement plan or plans, such alternative health insurance or faculty or Medical Center retirement plan or plans shall apply to and govern the University employees included in such plan or plans. The University shall be responsible for managing its non-Medicare eligible retiree health insurance. Subject to the Act, the University may offer an alternative health insurance plan for Medicare-eligible retirees.

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 benefits 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,

9407 and the authority to implement cafeteria-style benefits for University employees other than Classified
9408 Employees.

9409 Insurance and all proceeds therefrom provided pursuant to § 23-38.119 of the Act shall be [~~except~~
9410 exempt] from legal process and may be subject to assignment as provided in subsection A of
9411 § 23-38.119.

9412 D. Employee Relations.

9413 General. The Systems shall contain provisions that protect the rights and privileges of University
9414 employees consistent with sound management principles and fair employment practice law. At regular
9415 intervals, the University shall engage in consultations and discussions with, and receive input from,
9416 diverse employee groups regarding human resources issues, including the Academic Division Human
9417 Resources System and the College Human Resources System.

9418 Employee Safety and Health. The Systems shall contain provisions that promote workplace safety
9419 compliance with applicable law and regulations.

9420 Employee Work Environment. The Systems shall promote a work environment that is conducive to
9421 the performance of job duties, and free from intimidation or coercion in violation of State or federal
9422 law, including sexual harassment or other discrimination.

9423 Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to
9424 policies and procedures for awarding, honoring, or otherwise recognizing University employees,
9425 including but not limited to those who have performed particularly meritorious service for the
9426 University, have been employed by the University for specified periods of time, or have retired from the
9427 University after lengthy service.

9428 Counseling Services. The Systems shall provide counseling services through the State's Employee
9429 Assistance Program or a University Employee Assistance Program to any eligible University employee
9430 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the
9431 circumstances under which the time necessary to participate in such counseling may be granted.

9432 Unemployment Compensation. The Systems shall ensure that University employees receive the full
9433 unemployment compensation benefits to which they are legally entitled, and that the University's liability
9434 is limited to legitimate claims for such benefits.

9435 Workers' Compensation. The Systems shall ensure that University employees have workers'
9436 compensation benefits to which they are legally entitled pursuant to the State Employees' Workers
9437 Compensation Program administered by the Department of Human Resource Management.

9438 8. Performance Planning and Evaluation. The Systems shall include one or more performance
9439 planning and evaluation processes for University employees that (i) establish and communicate the
9440 University's performance expectations, (ii) help develop productive working relationships, (iii) allow
9441 employees to present their views concerning their performance, (iv) identify areas for training or
9442 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify
9443 how superlative or inadequate performance shall be addressed, and (vii) ensure that all University
9444 employees are provided relevant information on the evaluation process. The Systems may include
9445 separate performance and evaluation processes for reasonably distinguishable groups of University
9446 employees. On the Effective Date of the University's initial Management Agreement with the
9447 Commonwealth, the existing merit-based performance management system for faculty and Medical
9448 Center employees shall continue, until amended by the University. On or after that Effective Date,
9449 Academic Division and College nonfaculty salaried Participating Covered Employees may be subject to
9450 a variable merit-based performance management system.

9451 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all
9452 employees and to ensure safe, efficient University operations and compliance with the law, the Systems
9453 shall establish rules of personal conduct and standards of acceptable work performance for University
9454 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for
9455 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or
9456 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more
9457 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action
9458 to employee conduct occurring only when employees are at work or are otherwise representing the
9459 University in an official or work-related capacity, unless otherwise specifically provided by the policies
9460 of the Systems or other applicable law. The Systems may provide for a probationary period for new
9461 and re-employed University salaried nonfaculty employees, during which period the policies for
9462 corrective discipline shall not be applicable and the employee may not use the grievance procedure set
9463 forth in the next paragraph. The Systems may include separate rules of personal conduct and standards
9464 of acceptable work performance and policies for corrective discipline for reasonably distinguishable
9465 groups of University employees.

9466 10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to
9467 resolve employment-related problems and complaints informally, and shall be permitted to discuss their
9468 concerns freely and without fear of retaliation with immediate supervisors and management. In the

event that such problems cannot be resolved informally, all salaried nonfaculty University employees, regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the University's initial Management Agreement with the Commonwealth. On that Effective Date, and until changed by the University, the faculty grievance procedures in effect immediately prior to the Effective Date shall continue.

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

12. *Layoff Policy.* The Systems shall include one or more layoff policies for salaried University employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the University. These University layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the University or its respective major divisions and within other parts of the University, (v) the preferential employment rights, if any, of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, University employees who: (i) were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of Virginia. Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University 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 University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the University 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 University 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 University'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 University 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 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 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 University of Virginia 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

9530 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal
9531 Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment,
9532 reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing
9533 for University positions that are particularly safety sensitive, such as those requiring a Commercial
9534 Driver's License or the provision of patient care.

9535 15. Background Checks. The Systems shall include a process for conducting background checks,
9536 which may include but is not limited to reference checks, educational/ professional credentialing checks,
9537 and conviction and driver's records checks on applicants for full-time or part-time positions at the
9538 University, and for addressing situations where employees do not disclose a conviction on their
9539 application or otherwise falsify their application with regard to information concerning their
9540 education/professional credential and/or prior convictions.

9541 16. Other Employee Relations Policies and Procedures. The Systems shall include any other
9542 reasonable employee relations policies or procedures that the President, acting through the Executive
9543 Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited
9544 to, policies or procedures relating to orientation programs for new or re-employed University
9545 employees, an employee suggestion program, the responsibility of University employees for property
9546 placed in their charge, work breaks, inclement weather and emergencies, and employment outside the
9547 University.

9548 E. Leave and Release Time.

9549 The Systems shall include policies and procedures regarding leave for eligible employees. The
9550 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal
9551 uses. The Systems may provide for release time for such matters as the donation of blood, participation
9552 in an employee assistance program and other appropriate employment-related matters. On or after the
9553 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is
9554 adopted by the appropriate authority, the University shall continue to provide leave and release time to
9555 Participating Covered Employees in accordance with the leave and release time policies and procedures
9556 applicable to each classification of employees prior to that Effective Date. On or after that Effective
9557 Date, the University may provide an alternative leave and release time system for salaried nonfaculty
9558 Participating Covered Employees.

9559 F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.

9560 1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and
9561 procedures to ensure that all aspects of human resources management, including the employment of
9562 University employees, meet all requirements of federal and state law, and of the relevant policies of the
9563 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

9564 Employment. The Systems shall include policies and procedures for the recruitment, selection and
9565 hiring of University employees that are based on merit and fitness, including where appropriate a
9566 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference
9567 checks and conviction record checks. On and after the Effective Date of its initial Management
9568 Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies
9569 through the University's job posting system, the Commonwealth's job posting system, and other external
9570 media as appropriate. The Systems shall establish designated veterans' re-employment rights in
9571 accordance with applicable law.

9572 In order to encourage employees to attain the highest level positions for which they are qualified,
9573 and to compensate employees for accepting positions of increased value and responsibility, the Systems
9574 shall include policies and procedures governing the promotion of employees, including the effect of
9575 promotion on an employee's compensation.

9576 On or after the Effective Date of the University's initial Management Agreement with the
9577 Commonwealth, all employees hired from other state agencies shall be Participating Covered
9578 Employees. University Academic Division and College Classified Employees who change jobs within the
9579 Academic Division or the College through a competitive employment process - i.e., promotion or
9580 transfer - shall have the choice of remaining a Classified Employee or becoming a Participating
9581 Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that
9582 decision shall be irrevocable.

9583 Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice,
9584 where appropriate, of a decision either by the employee or by the University to separate the employee
9585 from the University in accordance with policies governing performance, conduct, or layoff.

9586 G. Information Systems.

9587 The University shall provide an electronic file transfer of information on all salaried University
9588 employees and shall continue to provide the Employee Position Reports to meet the human resources
9589 reporting requirements specified by law or by request of the Governor or the General Assembly, unless
9590 the University is specifically exempted from those requirements. The University shall conduct
9591 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 [2 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 Department of Human Resources Management.

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

On and after the Effective Date of its initial Management Agreement with the Commonwealth, University employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the University. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management.

In addition, all University employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to University personnel unless University employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.

ATTACHMENT [2 3]

Memorandum of Understanding
Between the University of Virginia and the
Department of Human Resources Management Regarding
The Reporting of Human Resources Management Data

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

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

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.

The University 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 University 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.

The University 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.

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 University's compliance with relevant federal and state employment laws and regulations.

The University may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self service). For the self-administered health plans provided by the University of Virginia Academic Division (agency 207) and Medical Center (agency 209), this section is not relevant.

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

Monthly Employee Position Report

Annual report on salaried, wage, and contract employees

The undersigned hereby agree to the provisions contained in the MOU.

APPROVALS:

The University of Virginia:

By:

Date

9653 *Executive Vice President and Chief Operating Officer*

9654

9655

9656 *Department of Human Resources Management:*

9657

9658 *By:*

Date

9659 *Director, Department of Human Resources Management*

9660

9661

EXHIBIT R

9662

9663

MANAGEMENT AGREEMENT

9664

BETWEEN

9665

THE COMMONWEALTH OF VIRGINIA

9666

AND

9667

THE UNIVERSITY OF VIRGINIA

9668

PURSUANT TO

9669

THE RESTRUCTURED HIGHER EDUCATION

9670

FINANCIAL AND ADMINISTRATIVE OPERATIONS

9671

ACT OF 2005

9672

9673

9674

POLICY GOVERNING

9675

FINANCIAL OPERATIONS AND MANAGEMENT

9676

9677

9678

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

9679

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

9680

I. PREAMBLE.

9681

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.

9686

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.

9688

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.

9694

II. DEFINITIONS.

9695

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

9696

"Academic Division" means that part of the University known as State Agency 207.

9698

"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.

9700

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

9701

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as State Agency 246.

9703

"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.

9707

"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.

9710

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

9713

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

9714

"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 the Medical Center.

III. SCOPE OF POLICY.

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

The University of Virginia's College at Wise shall receive the benefits of this Policy as it is implemented by the University on behalf of the College at Wise, but the College at Wise shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the University's initial Management Agreement with the Commonwealth or that it may be granted by law in the future.

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. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

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

The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University 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, acting through the Executive Vice President and Chief Operating Officer, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) summary [~~year-end~~ monthly] reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and

9776 Budget, the Joint Legislative Audit and Review Commission, the Department of Medical Assistance
9777 Services, [the Auditor of Public Accounts,] and the State Council of Higher Education for Virginia [
9778 and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations
9779] , at a sufficient level of detail, on such schedule, and using such format that is compatible with the
9780 Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such
9781 other special reports as may be requested from time to time.

9782 VI. FINANCIAL [MANAGEMENT] POLICIES.

9783 The President, acting through the Executive Vice President and Chief Operating Officer, shall create
9784 and implement any and all financial [management] policies necessary to establish a financial
9785 management system with adequate risk management and internal control processes and procedures for
9786 the effective protection and management of all University financial resources. [Such policies will not
9787 address the underlying accounting principles and policies employed by the Commonwealth and the
9788 University, but rather will focus on the internal operations of the University's financial management.
9789 These policies shall include, but need not be limited to, the development of a tailored set of finance and
9790 accounting practices that seek to support the University's specific business and administrative operating
9791 environment in order to improve the efficiency and effectiveness of its business and administrative
9792 functions.] In general, the system of independent financial management policies shall be guided by the
9793 general principles contained in the Commonwealth's Accounting Policies and Procedures such as
9794 establishing strong risk management and internal accounting controls to ensure University financial
9795 resources are properly safeguarded and that appropriate stewardship of public funds is obtained
9796 through management's oversight of the effective and efficient use of such funds in the performance of
9797 University programs.

9798 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University
9799 shall continue to follow the Commonwealth's accounting policies until such time as specific alternate
9800 policies can be developed, approved and implemented. Such alternate policies shall include applicable
9801 accountability measures and shall be submitted to the State Comptroller for review and comment before
9802 they are implemented by the University.

9803 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

9804 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the
9805 University shall have the power and authority to manage all monies received by it. All State general
9806 funds to be allocated to the University shall remain subject to the appropriations process.

9807 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher
9808 Education for Virginia ("SCHEV") annually shall assess and certify to the Governor and General
9809 Assembly the degree to which each public institution of higher education of the Commonwealth has met
9810 the financial and administrative management and educational-related performance benchmarks called
9811 for by that subsection and approved as part of the Appropriation Act then in effect for the State goals
9812 and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to
9813 § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full
9814 fiscal year for which the financial and administrative management and educational-related performance
9815 benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for
9816 all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has
9817 been certified during the fiscal year by SCHEV as having met such institutional performance
9818 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain
9819 financial incentives, including interest on the tuition and fees and other non-general fund Educational
9820 and General Revenues deposited into the State Treasury by the public institution of higher education.

9821 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
9822 which it has received such certification from SCHEV, the University is authorized to hold and invest
9823 tuition, Educational and General ("E&G") fees, research and sponsored program funds, auxiliary
9824 enterprise funds, and all other non-general fund revenues subject to the following requirements:

9825 i) The University shall deposit such funds in the State Treasury pursuant to the State process in
9826 place at the time of such deposit;

9827 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section
9828 IX below;

9829 iii) To be consistent with the financial incentives set forth in § 2.2-5005 of the Code of Virginia
9830 described above, the University shall not be entitled to [receive the amount of interest the State would
9831 have earned on the University's tuition and fees and other non-general fund Educational and General
9832 Revenues deposited into the State Treasury if the State had continued to hold and invest such funds
9833 itself, until the fiscal year following the fiscal year for which it has received the required certification
9834 from SCHEV. Instead, the State Comptroller and the University shall enter into an agreement by which
9835 the University shall provide the State Comptroller with its daily cash balances for tuition and fees and
9836 other non-general fund Educational and General Revenues so the State Comptroller can calculate the
9837 interest the State would have earned if it had held and invested such funds itself. The State Comptroller

shall withhold such amount from the general fund appropriations payable to the University pursuant to the schedule set forth in Section IX below. If, pursuant to subsection C of § 23-9.6:1.01, the University receives the certification that it has met for a particular fiscal year the institutional performance benchmarks called for by that section and approved in the then-current Appropriation Act, the University shall receive such amount withheld for that fiscal year as its financial incentive as provided in paragraph 1 of § 2.2-5005. 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 State 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 withheld from the general fund appropriation distributed to the University pursuant to the schedule set forth in Section IX below. expend the amount of interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues held and invested by the University until the fiscal year following the fiscal year for which it has received the required certification from the State Council of Higher Education for Virginia. The University shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues until such time that, pursuant to subsection C of § 23-9.6:1.01, the University receives the certification that it has met for a particular year the institutional performance benchmarks called for by that section and approved in the then-current Appropriation Act. Not later than 30 days after receipt of the required State Council of Higher Education for Virginia certification (unless such 30-day period ends before July 1 in which case the relevant dates shall be no earlier than July 1 but no later than July 3), the Commonwealth shall make a non-general fund appropriation 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 University shall pay to the Commonwealth, not later than 30 days after notification from the State Council of Higher Education for Virginia, the balance in the escrow account as of June 30 of that year.]

[~~iv~~ 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 certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.

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

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

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

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

9899 by providing the framework for retaining and managing non-general funds, for the receipt of general
9900 funds, and for the use and stewardship of all these funds.

9901 The President, acting through the Executive Vice President and Chief Operating Officer, shall
9902 continue to provide oversight of the University's cash management system which is the framework for
9903 the retention of non-general funds. The Internal Audit Department of the University shall periodically
9904 audit the University's cash management system in accordance with appropriate risk assessment models
9905 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight
9906 shall continue to be provided through the annual audit and assessment of internal controls performed by
9907 the Auditor of Public Accounts.

9908 For the receipt of general and non-general funds, the University shall conform to the Security for
9909 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently
9910 exists and from time to time may be amended.

9911 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

9912 The President, through the Executive Vice President and Chief Operating Officer, shall continue to
9913 be authorized to create and implement any and all Accounts Receivable Management and Collection
9914 policies as part of a system for the management of University financial resources. The policies shall be
9915 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the
9916 Code of Virginia such that the University shall take all appropriate and cost effective actions to
9917 aggressively collect accounts receivable in a timely manner.

9918 These shall include, but not be limited to, establishing the criteria for granting credit to University
9919 customers; establishing the nature and timing of collection procedures within the above general
9920 principles; and the independent authority to select and contract with collection agencies and, after
9921 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all
9922 collection activities for all University accounts receivable such as reporting delinquent accounts to
9923 credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In
9924 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's
9925 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and
9926 the State Comptroller to implement such Programs, and shall provide a quarterly summary report of
9927 receivables to the Department of Accounts in accordance with the reporting procedures established
9928 pursuant to the Virginia Debt Collection Act.

9929 IX. DISBURSEMENT MANAGEMENT.

9930 The President, acting through the Executive Vice President and Chief Operating Officer, shall
9931 continue to be authorized to create and implement any and all disbursement policies as part of a system
9932 for the management of University financial resources. The disbursement management policies shall
9933 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in
9934 the execution of the University's operations. These policies also shall continue to address the timing of
9935 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the
9936 appropriateness of certain goods or services relative to the University's mission, including travel-related
9937 disbursements. Further, the University's disbursement policy shall continue to provide for the
9938 mechanisms by which payments are made including the use of charge cards, warrants, and electronic
9939 payments. Since the University no longer will interface to the CARS system or any replacement for the
9940 CARS system for disbursements, the University shall establish its own mechanisms for electronic
9941 payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to
9942 the Commonwealth's Debt Set-Off Collection Programs.

9943 Beginning with the fiscal year after the first fiscal year for which it first receives the required
9944 certification from SCHEV, the University may draw down its general fund appropriations (subject to
9945 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.
9946 Such funds shall be available to the University for disbursement as provided in the then-current rules of
9947 the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in
9948 accordance with the following schedule:

9949 i) the University may draw down [~~one-twelfth (1/12)~~ of its annual general fund appropriation for
9950 Educational and General programs on the first day of each month (less the interest retention specified
9951 in Section VII above), one-twenty-fourth (1/24) of its annual general fund appropriation for Educational
9952 and General programs on the first and fifteenth days of each month] and up to 50 percent of its
9953 annual general fund appropriation for Student Financial Assistance on or after September 1 of each
9954 year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet
9955 student obligations;

9956 ii) the University may draw down the sum of all tuition and E&G fees and all other non-general
9957 revenues deposited to the State Treasury each day on the same business day they were deposited; and

9958 iii) the University anticipates that expenditures could exceed available revenues from time to time
9959 during the year if the above disbursement schedule is used. When the University projects a cash deficit
9960 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.

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

The University currently has established guidelines relating to the total permissible amount of outstanding debt by monitoring University-wide ratios that measure debt compared to University balance-sheet resources and annual debt service burden. These measures are monitored and reviewed regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt capacity and debt management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.

XI. INVESTMENT POLICY.

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

10022 *Endowment investments shall be invested and managed in accordance with the Uniform Management*
10023 *of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.*

10024 *The Board of Visitors shall periodically review and approve the investment guidelines governing the*
10025 *University's operating and reserve funds.*

10026 **XII. INSURANCE AND RISK MANAGEMENT.**

10027 *By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any*
10028 *intent during the next biennium to withdraw from any insurance or risk management program made*
10029 *available to the University through the Commonwealth's Division of Risk Management and in which the*
10030 *University is then participating, to enable the Commonwealth to complete an adverse selection analysis*
10031 *of any such decision and to determine the additional costs to the Commonwealth that would result from*
10032 *any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University*
10033 *proceeds to withdraw from the insurance or risk management program, the University shall reimburse*
10034 *the Commonwealth for all such additional costs attributable to such withdrawal [, as determined by the*
10035 *Commonwealth's actuaries] . Such payment shall be made in a manner agreeable to both the*
10036 *University and the Commonwealth.*

10037 **[4. That the provisions of the first, second, and third enactments of this Act shall supersede the**
10038 **terms of any management agreement between the Commonwealth and Virginia Polytechnic**
10039 **Institute and State University, The College of William and Mary in Virginia, and The University**
10040 **of Virginia, respectively, that was entered into prior to January 1, 2006. Any such management**
10041 **agreement entered into prior to January 1, 2006, shall be deemed incorporated into this Act.**

10042 **5. That the provisions of the first, second, and third enactments of this Act shall expire at**
10043 **midnight on June 30, 2010. The expiration of such enactments shall automatically result in the**
10044 **expiration of the provisions of any management agreement between the Commonwealth and**
10045 **Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia,**
10046 **and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and**
10047 **incorporated into this Act.]**