

**VIRGINIA ACTS OF ASSEMBLY — CHAPTER**

*An Act 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.*

[S 675]

Approved

**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 subdivision 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 subdivision A 2 of § 23-38.97 of the Act, and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with Virginia Tech; and*

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

**AGREEMENT**

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

**ARTICLE 1. DEFINITIONS.**

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

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

*"Agreement" means "Management Agreement."*

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

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

*"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has*

entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.

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

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

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

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

"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).

## ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

### SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.

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

SECTION 2.1.1. Assessments and Accountability. Virginia Tech 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 A through F, 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 Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech by this Management Agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of Virginia Tech attached hereto as Exhibits A through F and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit A), (2) the leasing of property, including capital leases (Exhibit B), (3) information technology (Exhibit C), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit D), (5) human resources (Exhibit E), and (6) its system of financial management (Exhibit F), 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 A through F, the Commonwealth and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech 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 A through F. 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 A through F, to a person or persons within the University.

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

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

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

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

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

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

financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.

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

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

Virginia Tech 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 Virginia Tech shall assume full responsibility for management of Virginia Tech, 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 Virginia Tech 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 of the Act, prior to August 1, 2005, the Board of Visitors of Virginia Tech 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 University commits to furthering these State goals by:

1. In addition to its six-year target of achieving \$227 million in external research by 2011-12 [which is the last year of the six-year plan], the University commits to match from institutional funds, other than general funds or tuition, 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 University commits to work with the University of Virginia 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, the University of Virginia 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, 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 of the Code of Virginia, requires Virginia Tech to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement address, among other issues, such matters as Virginia Tech's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in Virginia Tech's Six-Year Plan submitted to SCHEV, and the parties therefore agree that Virginia Tech's Six-Year Plan and the description below meet the requirement of subsection B of § 23-38.97 of the Act.

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

The Funds for the Future program works on a sliding scale of family responsibility for coverage of tuition and fees. For example, students with a family adjusted gross income of \$30,000 or less (approximately 150% 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% of the Virginia Tech undergraduate student body, will receive incremental benefits under the Funds for the Future program. The institution will draw upon the full range of available resources to increase grant aid to these students and has established very aggressive goals for its institutional and private funds resources to create and sustain this program. As such, the University program is also based on the commitment of additional state General Fund support, consistent with the levels identified in its Six-Year Financial Plan; these amounts are based upon SCHEV calculations for incremental General Fund appropriations. Consistent with the current financial aid environment, the University also anticipates that existing federal, state, and University loan programs will be available, as needed, to assist students in addressing their annual costs of education not addressed by existing grant aid programs, the Funds for the Future program, or other available resources.

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

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

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

SECTION 2.4.1. *The Appropriation Act.* The Commonwealth and Virginia Tech agree that, pursuant

to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits A through F, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.

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

**SECTION 2.4.3. Title 2.2 of the Code of Virginia.** As provided in subsection B of § 23-38.92 of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to Virginia Tech 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, Virginia Tech 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, Virginia Tech 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, Virginia Tech 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.) of the Code of Virginia, 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 Virginia Tech 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 Virginia Tech 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 A through F.

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

**SECTION 3.1. Amendments.** Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision 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 subdivision 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 subdivision D 4 of § 23-38.88 of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § 23-38.98 of the Act, Virginia Tech's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if Virginia Tech fails to meet the requirements of Subchapter 3 of the Act, or (ii) if Virginia Tech fails to meet the requirements of this Management Agreement.

#### ARTICLE 4. GENERAL PROVISIONS.

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

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

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

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

### EXHIBIT A

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

#### POLICY GOVERNING CAPITAL PROJECTS

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

#### I. PREAMBLE.

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



Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted 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 to:

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

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

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

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

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

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

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

A. A system of competitive negotiation for Capital Professional Services, including a procedure for

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

B. A prequalification procedure for contractors or products;

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

D. A prompt payment procedure.

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

#### IX. ENVIRONMENTAL IMPACT REPORTS.

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

#### X. BUILDING DEMOLITIONS.

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

#### XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the University that capital projects involving building or land acquisition shall be

subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

A. Environmental and Land Use Considerations.

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

B. Infrastructure and Site Condition.

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

C. Title and Survey.

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

D. Appraisal.

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

XII. BUILDING OR LAND DISPOSITIONS.

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

XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

Operating Officer, on the status of such projects during construction.

#### XIV. REPORTING REQUIREMENTS.

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

### EXHIBIT B

#### MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY PURSUANT TO

#### THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

#### POLICY GOVERNING LEASES OF REAL PROPERTY

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

##### I. PREAMBLE.

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

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

##### II. DEFINITIONS.

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

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

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

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

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

Subchapter 3 of the Act.

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

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

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

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

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

### III. SCOPE OF POLICY.

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

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

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

### V. REQUIREMENTS FOR LEASES.

#### A. Factors to Be Considered When Entering into Leases.

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

#### B. Competition to Be Sought to Maximum Practicable Degree.

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

#### C. Approval of Form of Lease Required.

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

#### D. Execution of Leases.

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

#### E. Capital Leases.

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

#### F. Compliance with Applicable Law.

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

#### G. Certification of Occupancy.

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

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

POLICY GOVERNING  
INFORMATION TECHNOLOGY

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

**I. PREAMBLE.**

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

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

**II. DEFINITIONS.**

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

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

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

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

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

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

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

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

**III. SCOPE OF POLICY.**

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

*This Policy shall govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University. Upon the effective date of a Management Agreement between the Commonwealth and the University, as authorized by subsection D of § 23-38.88 and § 23-38.111 of the Code of Virginia, therefore, the University shall be exempt from those provisions*

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

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

#### IV. GENERAL PROVISIONS.

##### A. Board of Visitors Accountability and Delegation of Authority.

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

##### B. Strategic Planning.

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

##### C. Expenditure Reporting and Budgeting.

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

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

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

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

##### D. Project Management.

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

The President, acting through the appropriate designee, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network



infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.

On a quarterly basis, the President, acting through the Vice President for Information Technology and Chief Information 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 Vice President for Information Technology and Chief Information Officer in cooperation with the Provost and 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 Technology Investment Board.

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

*F. Audits.*

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

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

#### EXHIBIT 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 Subchapter 3 of the Act.

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

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

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

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

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

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

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

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

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation

of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 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 University has had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. 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, as well as a surplus materials disposition system for the University as a whole. Any University electronic procurement system shall integrate or interface with the Commonwealth's electronic procurement system.

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

##### B. Scope and Purpose of University Procurement Policies.

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

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

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

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

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

Consistent with this commitment, the University:

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

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

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

##### E. Implementation.

To effect its implementation under the Act, and if the University remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials

shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2, except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ 2.2-1124 and 2.2-1125; 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 of the Code of Virginia.

#### 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, 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% 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.

"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 \$1million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall

1399 still apply to professional services for such small construction projects.

1400 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who,  
 1401 at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the  
 1402 sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured  
 1403 under the contract, and who at such time is eligible and qualified in all respects to perform that  
 1404 contract, and who would have been eligible and qualified to submit a bid or proposal had the contract  
 1405 been procured through competitive sealed bidding or competitive negotiation.

1406 "Professional services" means work performed by an independent contractor within the scope of the  
 1407 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,  
 1408 dentistry, medicine, optometry, pharmacy or professional engineering.

1409 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,  
 1410 post, commission, committee, institution, board or political subdivision created by law to exercise some  
 1411 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
 1412 activities described in these Rules.

1413 "Public contract" means an agreement between the Institution and a nongovernmental source that is  
 1414 enforceable in a court of law.

1415 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform  
 1416 fully the contract requirements and the moral and business integrity and reliability that will assure good  
 1417 faith performance, and who has been prequalified, if required.

1418 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects  
 1419 to the Invitation to Bid.

1420 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative  
 1421 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

1422 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction  
 1423 adopted by the governing body of the Covered Institution.

1424 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
 1425 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
 1426 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
 1427 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
 1428 established for bid opening.

1429 "Services" means any work performed by an independent contractor wherein the service rendered  
 1430 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials  
 1431 and supplies.

1432 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working  
 1433 environment and individual goals that utilizes work experience and related services for assisting the  
 1434 handicapped person to progress toward normal living and a productive vocational status.

1435 § 5. Methods of procurement. -

1436 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for  
 1437 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,  
 1438 or competitive negotiation as provided in this section, unless otherwise authorized by law.

1439 B. Professional services shall be procured by competitive negotiation. Qualification-based selection  
 1440 shall be used for design services.

1441 C. Goods, services, or insurance may be procured by competitive negotiation.

1442 D. Construction may be procured only by competitive sealed bidding, except that competitive  
 1443 negotiation may be used in the following instances upon a determination made in advance by the  
 1444 Institution and set forth in writing that competitive sealed bidding is either not practicable or not  
 1445 fiscally advantageous to the public, which writing shall document the basis for this determination:

- 1446 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;
- 1447 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;
- 1448 3. By the Institution for the construction of highways and any draining, dredging, excavation,
- 1449 grading or similar work upon real property; or

1450 E. Upon a determination in writing that there is only one source practicably available for that which  
 1451 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed  
 1452 bidding or competitive negotiation. The writing shall document the basis for this determination. The  
 1453 Institution shall issue a written notice stating that only one source was determined to be practicably  
 1454 available, and identifying that which is being procured, the contractor selected, and the date on which  
 1455 the contract was or will be awarded. This notice shall be posted in a designated public area, which may  
 1456 be the Department of General Services' website for the Commonwealth's central electronic procurement  
 1457 system, or published in a newspaper of general circulation on the day the Institution awards or  
 1458 announces its decision to award the contract, whichever occurs first. Public notice shall also be  
 1459 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 United States General Services Administration contract or a contract awarded by any other agency of the United States government; and

2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States 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 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Institution shall include in every contract over \$10,000 the following provisions: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such

prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

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

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

§ 14. Prequalification generally; prequalification for construction. -

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

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

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

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

At least 30 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 10 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 10 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 of the Code of Virginia, 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, and 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 4% 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 10% 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 5%.

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 of the code of



1765 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,  
 1766 evidence of such coverage.

1767 B. The Department of General Services shall provide the form to the Institution. Failure of the  
 1768 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)  
 1769 of subsection A.

1770 C. No subcontractor shall perform any work on a construction project of the Institution unless he  
 1771 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage  
 1772 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of  
 1773 Virginia.

1774 § 26. Retainage on construction contracts. -

1775 A. In any contract issued by the Institution for construction that provides for progress payments in  
 1776 installments based upon an estimated percentage of completion, the contractor shall be paid at least  
 1777 95% of the earned sum when payment is due, with no more than 5% being retained to ensure faithful  
 1778 performance of the contract. All amounts withheld may be included in the final payment.

1779 B. Any subcontract for a public project that provides for similar progress payments shall be subject  
 1780 to the provisions of this section.

1781 § 27. Public construction contract provisions barring damages for unreasonable delays declared  
 1782 void. -

1783 A. Any provision contained in any public construction contract of the Institution that purports to  
 1784 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable  
 1785 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the  
 1786 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to  
 1787 causes within their control shall be void and unenforceable as against public policy.

1788 B. Subsection A shall not be construed to render void any provision of a public construction contract  
 1789 awarded by the Institution that:

1790 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the  
 1791 contractor, or its subcontractors, agents or employees;

1792 2. Requires notice of any delay by the party claiming the delay;

1793 3. Provides for liquidated damages for delay; or

1794 4. Provides for arbitration or any other procedure designed to settle contract disputes.

1795 C. A contractor making a claim against the Institution for costs or damages due to the alleged  
 1796 delaying of the contractor in the performance of its work under any public construction contract of the  
 1797 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the  
 1798 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage  
 1799 shall be equal to the percentage of the contractor's total delay claim that is determined through  
 1800 litigation or arbitration to be false or to have no basis in law or in fact.

1801 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of  
 1802 the contractor in the performance of work under any public construction contract for the Institution, it  
 1803 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to  
 1804 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution  
 1805 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is  
 1806 determined through litigation or arbitration to have been made in bad faith.

1807 § 28. Bid bonds. -

1808 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1  
 1809 million shall be accompanied by a bid bond from a surety company selected by the bidder that is  
 1810 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he  
 1811 will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not  
 1812 exceed 5% of the amount bid.

1813 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for  
 1814 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

1815 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids  
 1816 or proposals for construction contracts anticipated to be less than \$1 million.

1817 § 29. Performance and payment bonds. -

1818 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million  
 1819 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to  
 1820 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,  
 1821 structures or other improvements to real property owned by the Institution, the contractor shall furnish  
 1822 to the Institution the following bonds:

1823 1. Except for transportation-related projects, a performance bond in the sum of the contract amount  
 1824 conditioned upon the faithful performance of the contract in strict conformity with the plans,  
 1825 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 million.

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 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

1887 *seq.*).

1888 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution  
1889 shall not be open to public inspection.

1890 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect  
1891 bid records within a reasonable time after the opening of all bids but prior to award, except in the  
1892 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,  
1893 bid records shall be open to public inspection only after award of the contract.

1894 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect  
1895 proposal records within a reasonable time after the evaluation and negotiations of proposals are  
1896 completed but prior to award, except in the event that the Institution decides not to accept any of the  
1897 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection  
1898 only after award of the contract.

1899 E. Any inspection of procurement transaction records under this section shall be subject to  
1900 reasonable restrictions to ensure the security and integrity of the records.

1901 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in  
1902 connection with a procurement transaction or prequalification application submitted pursuant to  
1903 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 *et*  
1904 *seq.*); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to  
1905 or upon submission of the data or other materials, (ii) identify the data or other materials to be  
1906 protected, and (iii) state the reasons why protection is necessary.

1907 § 35. Exemption for certain transactions. -

1908 A. The provisions of these Rules shall not apply to:

1909 1. The selection of services related to the management and investment of the Institution's endowment  
1910 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be  
1911 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 *et seq.*) as required by  
1912 § 23-76.1.

1913 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the  
1914 Institution. However, such purchase procedures shall provide for competition where practicable.

1915 3. Procurement of any construction or planning and design services for construction by the  
1916 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
1917 obligated to conform to procurement procedures that are established by federal statutes or regulations,  
1918 whether or not those federal procedures are in conformance with the provisions of these Rules.

1919 4. The University of Virginia Medical Center.

1920 5. The purchase of goods and services by the Institution when such purchases are made under a  
1921 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

1922 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
1923 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
1924 regulations not in conformance with the provisions of these Rules, the Institution may comply with such  
1925 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination  
1926 of the Institution's President or his designee that acceptance of the grant or contract funds under the  
1927 applicable conditions is in the public interest. Such determination shall state the specific provision of  
1928 these Rules in conflict with the conditions of the grant or contract.

1929 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

1930 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into  
1931 contracts with faith-based organizations for the purposes described in this section on the same basis as  
1932 any other nongovernmental source without impairing the religious character of such organization, and  
1933 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

1934 B. For the purposes of this section, "faith-based organization" means a religious organization that is  
1935 or applies to be a contractor to provide goods or services for programs funded by the block grant  
1936 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
1937 104-193.

1938 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this  
1939 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's  
1940 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based  
1941 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of  
1942 religious freedom by the recipients of such goods, services, or disbursements.

1943 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
1944 purchase orders prominently display a nondiscrimination statement indicating that it does not  
1945 discriminate against faith-based organizations.

1946 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any  
1947 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on

the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

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

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

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

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

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:

1. The purchase of goods or services that are produced or performed by or related to:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
  - c. Private educational institutions; or
  - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
8. Royalties; or

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

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

§ 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning: "Contractor" means the entity that has a direct contract with the Institution.

2009 "Debtor" means any individual, business, or group having a delinquent debt or account with any  
 2010 state agency that obligation has not been satisfied or set aside by court order or discharged in  
 2011 bankruptcy.

2012 "Payment date" means either (i) the date on which payment is due under the terms of a contract for  
 2013 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days  
 2014 after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods  
 2015 or services by the Institution..

2016 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor  
 2017 to whom the contract was awarded or to any subcontractor in the performance of the work provided for  
 2018 in such contract.

2019 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment  
 2020 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

2021 § 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the provisions  
 2022 of § 26 relating to retainage shall remain valid.

2023 § 42. Prompt payment of bills by the Institution. -

2024 A. The Institution shall promptly pay for the completely delivered goods or services by the required  
 2025 payment date.

2026 Payment shall be deemed to have been made when offset proceedings have been instituted, as  
 2027 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

2028 B. Separate payment dates may be specified for contracts under which goods or services are  
 2029 provided in a series of partial deliveries or executions to the extent that such contract provides for  
 2030 separate payment for such partial delivery or execution.

2031 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where  
 2032 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall  
 2033 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by  
 2034 the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or  
 2035 services.

2036 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made  
 2037 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these  
 2038 Rules.

2039 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall  
 2040 include:

2041 1. A payment clause that obligates the contractor to take one of the two following actions within  
 2042 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the  
 2043 subcontractor under that contract:

2044 a. Pay the subcontractor for the proportionate share of the total payment received from the  
 2045 Institution attributable to the work performed by the subcontractor under that contract; or

2046 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the  
 2047 subcontractor's payment with the reason for nonpayment.

2048 2. A payment clause that requires (i) individual contractors to provide their social security numbers  
 2049 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification  
 2050 numbers.

2051 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts  
 2052 owed by the contractor that remain unpaid after seven days following receipt by the contractor of  
 2053 payment from the Institution for work performed by the subcontractor under that contract, except for  
 2054 amounts withheld as allowed in subdivision 1.

2055 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,  
 2056 interest shall accrue at the rate of 1% per month."

2057 Any such contract awarded shall further require the contractor to include in each of its subcontracts  
 2058 a provision requiring each subcontractor to include or otherwise be subject to the same payment and  
 2059 interest requirements with respect to each lower-tier subcontractor.

2060 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment  
 2061 clause in this section shall not be construed to be an obligation of the Institution. A contract  
 2062 modification shall not be made for the purpose of providing reimbursement for the interest charge. A  
 2063 cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

2064 § 46. Interest penalty; exceptions. -

2065 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the  
 2066 Institution to a vendor that remain unpaid after seven days following the payment date. However,  
 2067 nothing in this section shall affect any contract providing for a different rate of interest, or for the  
 2068 payment of interest in a different manner.

2069 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 10 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 10 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 10 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

2131 determines that the apparent low bidder is not responsible, it shall proceed as follows:

2132 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify  
2133 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for  
2134 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that  
2135 relate to the determination, if so requested by the bidder within five business days after receipt of the  
2136 notice.

2137 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
2138 challenging the evaluation. The Institution shall issue its written determination of responsibility based on  
2139 all information in the possession of the Institution, including any rebuttal information, within five  
2140 business days of the date the Institution received the rebuttal information. At the same time, the  
2141 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

2142 3. Such notice shall state the basis for the determination, which shall be final unless the bidder  
2143 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures  
2144 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action  
2145 as provided in § 54.

2146 The provisions of this subsection shall not apply to procurements involving the prequalification of  
2147 bidders and the rights of any potential bidders under such prequalification to appeal a decision that  
2148 such bidders are not responsible.

2149 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the  
2150 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in  
2151 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or  
2152 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the  
2153 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or  
2154 directed award as provided in subsection A of § 54, or both.

2155 If it is determined that the decision of the Institution was not an honest exercise of discretion, but  
2156 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable  
2157 state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract  
2158 has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

2159 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract  
2160 shall proceed under this section, and may not protest the award or proposed award under the  
2161 provisions of § 50 of these Rules.

2162 D. Nothing contained in this section shall be construed to require the Institution, when procuring by  
2163 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed  
2164 to be the most advantageous.

2165 § 50. Protest of award or decision to award. -

2166 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall  
2167 submit the protest in writing to the Institution, or an official designated by the Institution, no later than  
2168 10 days after the award or the announcement of the decision to award, whichever occurs first. Public  
2169 notice of the award or the announcement of the decision to award shall be given by the Institution in  
2170 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any  
2171 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to  
2172 protest the award or decision to award such contract shall submit the protest in the same manner no  
2173 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these  
2174 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part  
2175 upon information contained in public records pertaining to the procurement transaction that are subject  
2176 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall  
2177 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or  
2178 at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or  
2179 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest  
2180 and the relief sought. The Institution or designated official shall issue a decision in writing within 10  
2181 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror  
2182 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting  
2183 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as  
2184 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the  
2185 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of  
2186 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the  
2187 standards of § 55 of these Rules.

2188 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then  
2189 the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise  
2190 it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary  
2191 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 60 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 30 days of receipt of the written decision.

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

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

## ATTACHMENT 2

### Memorandum of Agreement

The Commonwealth of Virginia and 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 responsibility of the University. The solution must provide for orders, change orders and cancellations. Guidelines

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

2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

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

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

- 2375 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.
- 2376 6. eVA Interface standard does not currently support PCard orders; however these orders may be
- 2377 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.
- 2378 Schedule
- 2379 The University shall implement this agreement no later than July 2006.
- 2380 Metrics
- 2381 A. The University shall comply with the following Governor's eVA Management Objective:
- 2382 Ninety-five percent of all non-exempt orders to be processed by eVA. Includes non-exempt orders
- 2383 issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to
- 2384 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For
- 2385 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing
- 2386 by DPS, from mandatory processing through eVA. All non-exempt orders not processed by eVA shall be
- 2387 reported on the eVA Dashboard and the corresponding non-use fee paid by the University.
- 2388 B. The University shall meet the following management objectives for electronic procurement:
- 2389 1. Provide end users, including purchase-card users, access to an electronic system for buying;
- 2390 2. Conduct business with eVA registered vendors whenever possible;
- 2391 3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers
- 2392 electronically using eVA;
- 2393 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar
- 2394 value, that include commodity codes, complete item descriptions, quantities, and unit prices;
- 2395 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five
- 2396 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and
- 2397 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the
- 2398 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to
- 2399 monitor the usage of confirming orders with the objective of reducing their numbers to the extent
- 2400 possible.
- 2401 The University agrees that, for confirming orders, it will resolve any vendor dispute, including
- 2402 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such
- 2403 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or
- 2404 CGI-AMS.
- 2405 The University further agrees that:
- 2406 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
- 2407 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
- 2408 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);
- 2409 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
- 2410 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
- 2411 c. In the event the University does not provide resolution notification to the eVA Business Manager
- 2412 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
- 2413 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
- 2414 6. Timely process electronic change orders and cancellations;
- 2415 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA web site except
- 2416 as specifically exempted by DPS;
- 2417 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
- 2418 end users using the ERP/SciQuest Integration system. The University will be responsible for the
- 2419 accuracy of contract catalog pricing loaded into the ERP/SciQuest;
- 2420 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
- 2421 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10
- 2422 below);
- 2423 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate
- 2424 commodities, when such are identified;
- 2425 11. Complete and certify the monthly eVA Dashboard Report, and
- 2426 12. Timely remit any eVA transaction and non-use fees incurred by the institution.
- 2427 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
- 2428 D. The University shall assure that payments to CGI-AMS are current.

## 2430 EXHIBIT E

### 2431 MANAGEMENT AGREEMENT 2432 BETWEEN 2433 THE COMMONWEALTH OF VIRGINIA 2434 AND 2435

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

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

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

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

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

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

2497 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
 2498 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
 2499 missions of the University.

2500 "Effective Date" means the effective date of the initial Management Agreement between the  
 2501 University and the Commonwealth.

2502 "Governing Law" means the Act and the University's Enabling Legislation.

2503 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act  
 2504 between the University and the Commonwealth.

2505 "Participating Covered Employee" means (i) all salaried nonfaculty University employees who were  
 2506 employed as of the day prior to the Effective Date of the University's initial Management Agreement  
 2507 with the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be  
 2508 governed by such human resources program or programs, plans, policies, and procedures established by  
 2509 Virginia Polytechnic Institute and State University, (ii) all salaried nonfaculty University employees who  
 2510 are employed by the University on or after the Effective Date of the initial Management Agreement  
 2511 between the University and the Commonwealth, (iii) all non-salaried nonfaculty University employees  
 2512 without regard to when they were hired, (iv) all faculty University employees without regard to when  
 2513 they were hired.

2514 "University" means Virginia Polytechnic Institute and State University, consisting of the University  
 2515 Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station  
 2516 Division (State Agency 229).

2517 "University employee" means a Covered Employee.

2518 "University Human Resources System" means the human resources system for University employees  
 2519 as provided for herein.

### 2520 III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

2521 The University has had human resources system autonomy through decentralization for its employees  
 2522 for some time. For example, general faculty at the University are expressly exempt from the Virginia  
 2523 Personnel Act. The University has had decentralization in most human resources functions and activities  
 2524 since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the  
 2525 administration of hiring, classification, and promotion practices; the administration of separate  
 2526 retirement plans.

2527 The Act extends and reinforces the human resources autonomy previously granted to the University.  
 2528 This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and  
 2529 have in place by or after the Effective Date of its initial Management Agreement with the  
 2530 Commonwealth, a human resources system or systems for all University employees. On that Effective  
 2531 Date, and until changed by the University or unless otherwise specified in this Policy, the systems for  
 2532 University employees shall be the same systems applicable to those employees in effect immediately  
 2533 prior to that Effective Date.

### 2534 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

2535 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the  
 2536 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
 2537 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
 2538 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
 2539 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,  
 2540 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
 2541 implementation of those duties and responsibilities pursuant to the University's usual delegation policies  
 2542 and procedures.

### 2543 V. VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY HUMAN RESOURCES 2544 SYSTEMS.

2545 A. Adoption and Implementation of University Human Resources Systems. The President, acting  
 2546 through the Executive Vice President and Chief Operating Officer, is hereby authorized to adopt and  
 2547 implement human resources systems for University employees that implement and are consistent with the  
 2548 Governing Law, other applicable provisions of law, these University human resources policies, and any  
 2549 other human resources policies adopted by the Department of Human Resource Management or the  
 2550 Board of Visitors for University personnel, unless University employees are exempted from those other  
 2551 human resources policies by law or policy. The University Human Resources Systems shall include a  
 2552 delegation of personnel authority to appropriate University officials responsible for overseeing and  
 2553 implementing the University Human Resources Systems, including a grant of authority to such officials  
 2554 to engage in further delegation of authority as the President or his designee deems appropriate.

2555 The University commits to regularly engage employees in appropriate discussions and to receive  
 2556 employee input as the new University Human Resources Systems are developed. The University will  
 2557 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;

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 of the Code of Virginia, 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 therefrom 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 of the Act.

#### *D. Employee Relations.*

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

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

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

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

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

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

7. Workers' Compensation. The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees' Workers'

2741 Compensation Program administered by the Department of Human Resource Management.

2742 8. Performance Planning and Evaluation. The Systems shall include one or more performance  
 2743 planning and evaluation processes for University employees that (i) establish and communicate the  
 2744 University's performance expectations, (ii) help develop productive working relationships, (iii) allow  
 2745 employees to present their views concerning their performance, (iv) identify areas for training or  
 2746 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify  
 2747 how superlative or inadequate performance shall be addressed, and (vii) ensure that all University  
 2748 employees are provided relevant information on the evaluation process. The Systems may include  
 2749 separate performance and evaluation processes for reasonably distinguishable groups of University  
 2750 employees. On the Effective Date of the University's initial Management Agreement with the  
 2751 Commonwealth, the existing merit-based performance management system for faculty shall continue,  
 2752 until amended by the University. On or after that Effective Date, nonfaculty salaried Participating  
 2753 Covered Employees may be subject to a variable merit-based performance management system.

2754 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all  
 2755 employees and to ensure safe, efficient University operations and compliance with the law, the Systems  
 2756 shall establish rules of personal conduct and standards of acceptable work performance for University  
 2757 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for  
 2758 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or  
 2759 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more  
 2760 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action  
 2761 to employee conduct occurring only when employees are at work or are otherwise representing the  
 2762 University in an official or work-related capacity, unless otherwise specifically provided by the policies  
 2763 of the Systems or other applicable law. The Systems may provide for a probationary period for new and  
 2764 re-employed University salaried nonfaculty employees, during which period the policies for corrective  
 2765 discipline shall not be applicable and the employee may not use the grievance procedure set forth in the  
 2766 next paragraph. The Systems may include separate rules of personal conduct and standards of  
 2767 acceptable work performance and policies for corrective discipline for reasonably distinguishable groups  
 2768 of University employees.

2769 10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to  
 2770 resolve employment-related problems and complaints informally, and shall be permitted to discuss their  
 2771 concerns freely and without fear of retaliation with immediate supervisors and management. In the event  
 2772 that such problems cannot be resolved informally, all salaried nonfaculty University employees,  
 2773 regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in  
 2774 § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of  
 2775 the Code of Virginia, to the extent it was applicable to their classification of employees prior to the  
 2776 Effective Date of the University's initial Management Agreement with the Commonwealth. On that  
 2777 Effective Date, and until changed by the University, the faculty grievance procedures in effect  
 2778 immediately prior to the Effective Date shall continue.

2779 11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the  
 2780 Classified Employee may file a complaint with the Department of Human Resource Management, Office  
 2781 of Equal Employment Services, with the appropriate University office, or with the appropriate federal  
 2782 agencies. All Participating Covered Employees and applicants for employment after the Effective Date of  
 2783 the University's initial Management Agreement with the Commonwealth shall file a complaint with the  
 2784 appropriate University office or with the appropriate federal agencies.

2785 12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University  
 2786 employees who lose their jobs for reasons other than their job performance or conduct, such as a  
 2787 reduction in force or reorganization at the University. These University layoff policies shall govern such  
 2788 issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)  
 2789 notice to employees affected by a layoff, (iv) placement options within the University or its respective  
 2790 major divisions and within other parts of the University, (v) the preferential employment rights, if any,  
 2791 of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for  
 2792 recalling employees. In accordance with the terms of the Act, University employees who: (i) were  
 2793 employed prior to the Effective Date of the University's initial Management Agreement with the  
 2794 Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition  
 2795 Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated  
 2796 because of a reduction in force shall have the same preferential hiring rights with State agencies and  
 2797 other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of  
 2798 Virginia.

2799 Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 of the Code  
 2800 of Virginia, on State employees who were hired by a State agency or executive branch institution before  
 2801 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 placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.

#### *E. Leave and Release Time.*

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

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

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

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

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

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

*G. Information Systems.*

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

*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).*

*I. 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:

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

Department of Human Resources Management:

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

#### EXHIBIT F

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

#### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

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

#### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

##### I. PREAMBLE.

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

2985 This Policy is intended to cover the authority that may be granted to the University pursuant to  
 2986 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the  
 2987 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act  
 2988 and the University's Enabling Legislation, are not affected by this Policy.

## 2989 II. DEFINITIONS.

2990 As used in this policy, the following terms shall have the following meanings, unless the context  
 2991 requires otherwise:

2992 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
 2993 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

2994 "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and  
 2995 State University.

2996 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with  
 2997 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has  
 2998 entered into a Management Agreement with the Commonwealth to be governed by the provisions of  
 2999 Subchapter 3 of the Act.

3000 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of  
 3001 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
 3002 missions of the University.

3003 "Effective Date" means the effective date of the initial Management Agreement between the  
 3004 University and the Commonwealth.

3005 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act  
 3006 between the University and the Commonwealth of Virginia.

3007 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section  
 3008 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from  
 3009 general government funds, as defined in the December 20, 2004 Report to the Governor and General  
 3010 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

3011 "University" means Virginia Polytechnic Institute and State University, consisting of the University  
 3012 Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station  
 3013 Division (State Agency 229).

## 3014 III. SCOPE OF POLICY.

3015 This Policy applies to the University's responsibility for management, investment and stewardship of  
 3016 all its financial resources, including but not limited to, general, non-general and private funds. This  
 3017 responsibility includes maintaining an independent uniform system of accounting, financial reporting,  
 3018 and internal controls adequate to protect and account for the University's financial resources.

3019 Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the  
 3020 benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative  
 3021 Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the  
 3022 Agriculture Experiment Station Division shall not receive any additional independent financial  
 3023 operations and management authority as a result of this Management Agreement beyond the  
 3024 independent financial operations and management authority that it had prior to the Effective Date of the  
 3025 University's initial Management Agreement with the Commonwealth or that it may be granted by law in  
 3026 the future.

## 3027 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

3028 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the  
 3029 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
 3030 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
 3031 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
 3032 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,  
 3033 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
 3034 implementation of those duties and responsibilities pursuant to the University's usual delegation policies  
 3035 and procedures.

## 3036 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

3037 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
 3038 continue to be authorized by the Board to maintain existing and implement new policies governing the  
 3039 management of University financial resources. These policies shall continue to (i) ensure compliance  
 3040 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting  
 3041 principles employed by the Commonwealth, including the use of fund accounting principles, with regard  
 3042 to the establishment of the underlying accounting records of the University and the allocation and  
 3043 utilization of resources within the accounting system, including the relevant guidance provided by the  
 3044 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and  
 3045 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 monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

#### VI. FINANCIAL MANAGEMENT POLICIES.

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

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

#### VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

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

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

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

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

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

iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88 of the Act, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

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

v) Beginning on the effective date of its initial Management Agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required 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.

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.

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

#### IX. DISBURSEMENT MANAGEMENT.

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

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;

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

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

These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and

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

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

#### X. DEBT MANAGEMENT.

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

Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes, 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  
AND  
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA**

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

**RECITALS**

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

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

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

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

**AGREEMENT**

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

**ARTICLE 1. DEFINITIONS.**

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

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

"Agreement" means "Management Agreement."

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

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

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

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

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

3351 "Management Agreement" means this agreement between the Commonwealth of Virginia and the  
 3352 College as required by subsection D of § 23-38.88 and Subchapter 3 of the Act.

3353 "Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the  
 3354 College.

3355 "Public institution of higher education" means those two-year and four-year institutions enumerated  
 3356 in § 23-14 of the Code of Virginia.

## 3357 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

3358 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability. Subchapter 3 of the  
 3359 Act provides that, upon the execution of, and as of the effective date for, this Management Agreement,  
 3360 the College shall become a Covered Institution entitled to be granted by the Commonwealth and to  
 3361 exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in  
 3362 this Management Agreement. In general, subject to its management agreement with the Commonwealth,  
 3363 status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is  
 3364 intended to replace (i) the post-General Assembly authorization prior-approval system of reviews,  
 3365 approvals, policies and procedures carried out and implemented by a variety of central State agencies  
 3366 with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully  
 3367 responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its  
 3368 management agreement with the Commonwealth.

3369 SECTION 2.1.1. Assessments and Accountability. The College and its implementation of the  
 3370 enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board  
 3371 of Visitors policies attached hereto as Exhibits G through L, shall be subject to the reviews, assessments,  
 3372 and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint  
 3373 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or  
 3374 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or  
 3375 Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by  
 3376 law other than the Act.

3377 SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and  
 3378 limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement;  
 3379 Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth  
 3380 and the College agree that the Commonwealth has granted to the College by this Management  
 3381 agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of  
 3382 the College attached hereto as Exhibits G through L and governing (1) the undertaking and  
 3383 implementation of capital projects, and other acquisition and disposition of property (Exhibit G), (2) the  
 3384 leasing of property, including capital leases (Exhibit H), (3) information technology (Exhibit I), (4) the  
 3385 procurement of goods, services, including certain professional services, insurance, and construction  
 3386 (Exhibit J), (5) human resources (Exhibit K), and (6) its system of financial management (Exhibit L),  
 3387 including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to establish tuition,  
 3388 fees, room, board, and other charges consistent with sum sufficient appropriation authority for  
 3389 non-general funds as provided by the Governor and the General Assembly in the Commonwealth's  
 3390 biennial appropriations authorization. Subject to the specific conditions and limitations contained in  
 3391 Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement,  
 3392 and in one or more of the Board of Visitors policies attached hereto as Exhibits G through L, the  
 3393 Commonwealth and the College agree that the Commonwealth has expressly granted to the College all  
 3394 the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of  
 3395 the Act.

3396 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
 3397 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
 3398 of, this Management Agreement and the policies adopted by it and attached as Exhibits G through L.  
 3399 Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally  
 3400 permissible procedures, specifically delegate the duties and responsibilities set forth in this Management  
 3401 Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the  
 3402 Board and attached hereto as Exhibits G through L, to a person or persons within the College.

3403 SECTION 2.1.3. Reimbursement by the College of Certain Costs. By July 1 of each odd-numbered  
 3404 year, the College shall inform the Secretary of Finance of any intent during the next biennium to  
 3405 withdraw from any health or other group insurance or risk management program made available to the  
 3406 College through any agency, body corporate, political subdivision, authority, or other entity of the  
 3407 Commonwealth, and in which the College is then participating, to enable the Commonwealth's actuaries  
 3408 to complete an adverse selection analysis of any such decision and to determine the additional costs to  
 3409 the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs  
 3410 to the Commonwealth, the College proceeds to withdraw from such health or other group insurance or  
 3411 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 subdivision 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 Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to the College 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 College 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 College 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 College 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 College to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the College to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the College's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the College and public sector suppliers.

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

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

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

**SECTION 2.1.9. Exercise of Authority.** The College and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the



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

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

#### SECTION 2.2. State Goals.

SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § 23-38.88 of the Act, 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, other than general funds or tuition, 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 increasing the economic and social diversity of the student body at the College. The College is absolutely committed to assuring access to any qualified and admitted Virginian regardless of family income. The primary initiative in this area is Gateway William and Mary, which shall be substantially as described in the remainder of this Section 2.2.2, as may amended from time to time by the Board of Visitors of the College and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations.

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

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

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

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

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

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

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

**SECTION 2.4.3. Title 2.2 of the Code of Virginia.** As provided in subsection B of § 23-38.92 of the

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

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

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

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

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

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

SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through L shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the College's website. The change or deviation shall become effective unless one of the above persons notifies the College in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision 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 subdivision 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 subdivision D 4 of § 23-38.88 of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § 23-38.98 of the Act, the College's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if the College fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the College fails to meet the requirements of this Management Agreement.

#### ARTICLE 4. GENERAL PROVISIONS.

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

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

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

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

### EXHIBIT G

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

#### POLICY GOVERNING CAPITAL PROJECTS

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

#### I. PREAMBLE.

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

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

#### II. DEFINITIONS.

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

3716 requires otherwise:

3717 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
3718 Chapter 4.10 of Title 23 of the Code of Virginia.

3719 "Board of Visitors" or "Board" means the Rector and Visitors of the College of William & Mary in  
3720 Virginia.

3721 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting  
3722 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

3723 "Capital Professional Services" means professional engineering, architecture, land surveying and  
3724 landscape architecture services related to capital projects.

3725 "Capital project(s)" means the acquisition of any interest in land, including improvements on the  
3726 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital  
3727 Leases.

3728 "College" means the College of William & Mary in Virginia, (State Agency 204), and the Virginia  
3729 Institute of Marine Science, (State Agency 268).

3730 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a  
3731 public institution of higher education of the Commonwealth of Virginia that has entered into a  
3732 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the  
3733 Act.

3734 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
3735 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
3736 missions of the individual public institutions of higher education of the Commonwealth, and as provided  
3737 in §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

3738 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on  
3739 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing  
3740 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

3741 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section  
3742 9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from  
3743 general government funds, as defined in the December 20, 2004 Report to the Governor and General  
3744 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

### 3745 III. SCOPE OF POLICY.

3746 This Policy applies to the planning and budget development for capital projects, capital project  
3747 authorization, and the implementation of capital projects, whether funded by a general fund  
3748 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other  
3749 sources.

3750 This Policy provides guidance for 1) the process for developing one or more capital project  
3751 programs for the College, 2) authorization of new capital projects, 3) procurement of Capital  
3752 Professional Services and construction services, 4) design reviews and code approvals for capital  
3753 projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land  
3754 acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting  
3755 requirements.

### 3756 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

3757 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
3758 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
3759 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
3760 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
3761 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,  
3762 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
3763 implementation of those duties and responsibilities pursuant to the College's usual delegation policies  
3764 and procedures.

### 3765 V. CAPITAL PROGRAM.

3766 The President shall adopt a system for developing one or more capital project programs that defines  
3767 or define the capital needs of the College for a given period of time consistent with the College's  
3768 published Master Plan. This process may or may not mirror the Commonwealth's requirements for  
3769 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major  
3770 Capital Projects that are to be funded entirely or in part by a general fund appropriation of the  
3771 General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's  
3772 requirements for capital plans. The Board may approve amendments to the program for Major Capital  
3773 Projects annually or more often if circumstances warrant.

3774 It shall be College policy that each capital project program shall meet the College's mission and  
3775 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College  
3776 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 College'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 his designee, 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 pre-appropriation 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 College 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 his designee, for all other capital projects. The President 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 his designee, 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 College 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 College is committed to:

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

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

Making procurement rules clear in advance of any competition;

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

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

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

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

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

A prequalification procedure for contractors or products;

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

A prompt payment procedure.

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

#### VIII. DESIGN REVIEWS AND CODE APPROVALS.

The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the

3838 design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall  
 3839 be required. For all capital projects other than Major Capital Projects, the President, acting through  
 3840 his designee, shall adopt procedures for design review and project authorization based on the size,  
 3841 scope and cost estimate provided with the design. It shall be the College's policy that all capital  
 3842 projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide  
 3843 Building Code (VUSBC) standards and the applicable accessibility code.

3844 The President shall designate a Building Official responsible for building code compliance by either  
 3845 (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the  
 3846 Department of General Services, Division of Engineering and Buildings, to perform the Building Official  
 3847 function. If option (i) is selected, the individual hired as the College Building Official shall be a  
 3848 full-time employee, a registered professional architect or engineer, and certified by the Department of  
 3849 Housing and Community Development to perform this Building Official function. The College Building  
 3850 Official shall issue building permits for each capital project required by the VUSBC to have a building  
 3851 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building  
 3852 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification,  
 3853 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital  
 3854 project and that such capital project has been inspected by the State Fire Marshal or his designee.  
 3855 When serving as the College Building Official, such individual shall organizationally report directly and  
 3856 exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill  
 3857 the code review requirement by maintaining a review unit supported by resources and staff who are  
 3858 certified by the Department of Housing and Community Development in accordance with § 36-137 of the  
 3859 Code of Virginia for such purpose and who shall review plans, specifications and documents for  
 3860 compliance with building codes and standards and perform required inspections of work in progress and  
 3861 the completed capital project. No individual licensed professional architect or engineer hired or  
 3862 contracted with to perform these functions shall also perform other building code-related design,  
 3863 construction, facilities-related project management or facilities management functions for the College on  
 3864 the same capital project.

#### 3865 IX. ENVIRONMENTAL IMPACT REPORTS.

3866 It shall be the policy of the College to assess the environmental, historic preservation, and  
 3867 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts  
 3868 to the extent practicable. The College shall develop a procedure for the preparation and approval of  
 3869 environmental impact reports for capital projects, in accordance with State environmental, historic  
 3870 preservation, and conservation requirements generally applicable to capital projects otherwise meeting  
 3871 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of  
 3872 \$300,000 or more.

#### 3873 X. BUILDING DEMOLITIONS.

3874 It shall be the policy of the College to consider the environmental and historical aspects of any  
 3875 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.  
 3876 The College shall develop a procedure for the preparation and review of demolition requests, including  
 3877 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review  
 3878 Board in accordance with State historic preservation requirements generally applicable to capital  
 3879 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding  
 3880 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported  
 3881 Debt, general laws applicable to State owned property shall apply.

#### 3882 XI. BUILDING OR LAND ACQUISITIONS.

3883 It is the policy of the College that capital projects involving building or land acquisition shall be  
 3884 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real  
 3885 property. The President, acting through his designee, shall ensure that the project management system  
 3886 implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters  
 3887 relating to the acquisition of buildings and land as any prudent purchaser would perform to the end  
 3888 that any building or land acquired by the College shall be suitable for its intended purpose, that the  
 3889 acquisition can be made without substantial risk of liability to the College and that the cost of the real  
 3890 property to be acquired, together with any contemplated development thereof, shall be such that  
 3891 compliance with the provisions of Section VI of this Policy is achieved. In addition, the President,  
 3892 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following  
 3893 specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

##### 3894 A. Environmental and Land Use Considerations.

3895 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition.  
 3896 Such cooperation shall include but not be limited to furnishing any information that the locality may  
 3897 reasonably request and reviewing any requests by the locality with regard to any such acquisition. The  
 3898 College 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 College to comply with local zoning laws and ordinances.

*B. Infrastructure and Site Condition.*

The President, acting through his designee, 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 College 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 his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the College 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 College'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 College.

**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 College's Enabling Legislation.

**XIII. PROJECT MANAGEMENT SYSTEMS.**

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

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

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

**XIV. REPORTING REQUIREMENTS.**

In addition to complying with any internal reporting systems contained in the College's project management systems, as described in Section XIII above, the College shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through his designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

**EXHIBIT H**

**MANAGEMENT AGREEMENT**

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

POLICY GOVERNING  
 LEASES OF REAL PROPERTY

THE RECTOR AND VISITORS OF  
 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA  
 POLICY GOVERNING LEASES OF REAL PROPERTY

**I. PREAMBLE.**

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

This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act 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.**

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. 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 College. 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 his designee, 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 his designee, 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 his designee, it is impractical to procure Leases through competition.

C. Approval of Form of Lease Required.

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

D. Execution of Leases.

All Leases entered into by the College shall be executed only by those College officers or persons authorized by the President 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 College's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the College, no other College 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 College.

F. Compliance with Applicable Law.

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

G. Certification of Occupancy.

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

EXHIBIT I

MANAGEMENT AGREEMENT

BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
OF 2005

POLICY GOVERNING  
INFORMATION TECHNOLOGY

THE RECTOR AND VISITORS OF  
THE COLLEGE OF WILLIAM & MARY IN VIRGINIA  
POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

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

Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between the Commonwealth and the College of William & Mary in Virginia that incorporates this Policy.

The Board of Visitors of the College is authorized to adopt this Information Technology Policy pursuant to § 23-38.111 of the Code of Virginia.

## II. DEFINITIONS.

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

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

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

"College" means the College of William & Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).

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

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

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

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

## III. SCOPE OF POLICY.

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

This Policy shall govern the College's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College. Upon the effective date of a Management Agreement between the Commonwealth and the College, as authorized by subsection D of § 23-38.88 and § 23-38.111, therefore, the College shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the College's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College; provided, however, that the College still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the College.

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

## IV. GENERAL PROVISIONS.

### A. Board of Visitors Accountability and Delegation of Authority.

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

### B. Strategic Planning.

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

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

**C. Expenditure Reporting and Budgeting.**

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

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

The College shall be specifically exempt from:

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

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

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

**D. Project Management.**

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

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

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

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

The College shall be specifically exempt from:

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

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

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

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

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

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

The President, acting through his designee, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.

For purposes of implementing this Policy, the President shall appoint an existing College employee to serve as a liaison between the College and the State CIO.

*F. Audits.*

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

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

*EXHIBIT J*

*MANAGEMENT AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND*

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

*POLICY GOVERNING  
THE PROCUREMENT OF GOODS, SERVICES,  
INSURANCE, AND CONSTRUCTION AND  
THE DISPOSITION OF SURPLUS MATERIALS*

*THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM & MARY  
POLICY GOVERNING THE PROCUREMENT OF  
GOODS, SERVICES, INSURANCE AND CONSTRUCTION  
AND THE DISPOSITION OF SURPLUS MATERIALS*

*I. PREAMBLE.*

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

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

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

*II. DEFINITIONS.*

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

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

"Agreement" means "Management Agreement."

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

"College" means the College of William & Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).

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

4265 the Act.

4266 "Effective Date" means the effective date of the Management Agreement.

4267 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
4268 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
4269 missions of the individual public institutions of higher education of the Commonwealth.

4270 "Goods" means all material, equipment, supplies, and printing, including information technology and  
4271 telecommunications goods such as automated data processing hardware and software.

4272 "Management Agreement" means the agreement required by subsection D of § 23-38.88 between the  
4273 Commonwealth of Virginia, and the College of William & Mary in Virginia.

4274 "Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction"  
4275 attached to this Policy as Attachment 1.

4276 "Services" as used in this Policy means any work performed by an independent contractor wherein  
4277 the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of  
4278 equipment, materials and supplies, and shall include both professional services, which include the  
4279 practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and  
4280 nonprofessional services, which include any service not specifically identified as professional services.

4281 "Surplus materials" means personal property including, but not limited to, materials, supplies,  
4282 equipment and recyclable items, that are determined to be surplus by the College.

### 4283 III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

4284 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
4285 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
4286 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
4287 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
4288 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,  
4289 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
4290 implementation of those duties and responsibilities pursuant to the College's usual delegation policies  
4291 and procedures.

### 4292 IV. GENERAL PROVISIONS.

#### 4293 A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement 4294 Policies.

4295 The College has had decentralization and pilot program autonomy in many procurement functions  
4296 and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy  
4297 previously granted to the College in Item 330 E of the 1994 Appropriation Act. This Policy therefore is  
4298 adopted by the Board of Visitors to enable the College to develop a procurement system, as well as a  
4299 surplus materials disposition system. Any College electronic procurement system shall integrate or  
4300 interface with the Commonwealth's electronic procurement system.

4301 This Policy shall be effective on the Effective Date of the College's initial Management Agreement  
4302 with the Commonwealth. The implementing policies and procedures adopted by the President to  
4303 implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors  
4304 affecting procurements at the College, including policies regarding the nature and amounts of  
4305 procurements that may be undertaken without the approval of the Board of Visitors, or of the President.

#### 4306 B. Scope and Purpose of College Procurement Policies.

4307 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be  
4308 the policy of the College that procurements conducted by the College result in the purchase of high  
4309 quality goods and services at reasonable prices, and that the College be free, to the maximum extent  
4310 permitted by law and this Policy, from constraining policies that hinder the ability of the College to do  
4311 business in a competitive environment. This Policy, together with the Rules Governing Procurement of  
4312 Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all  
4313 procurements undertaken by the College, regardless of the source of funds.

#### 4314 C. Collaboration, Communication, and Cooperation with the Commonwealth.

4315 The College is committed to developing, maintaining, and sustaining collaboration, communication,  
4316 and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly  
4317 with the Offices of the Secretaries of Administration and Technology, the Department of General  
4318 Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals  
4319 common to both the College and the Commonwealth and the mechanisms by which such objectives and  
4320 goals may be jointly pursued and achieved are among the desired outcomes of such collaboration,  
4321 communication, and cooperation.

#### 4322 D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.

4323 The College is committed to maximizing its internal operational efficiencies, economies of scale  
4324 among institutions of higher education, and the leveraged buying power of the Commonwealth as a  
4325 whole.



4326 *Consistent with this commitment, the College:*

4327 *i) May purchase from and participate in all statewide contracts for goods and services, including*  
 4328 *information technology goods and services, except that the College shall purchase from and participate*  
 4329 *in contracts for communications services and telecommunications facilities entered into by the Virginia*  
 4330 *Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an exception is*  
 4331 *provided in the Appropriation Act or by other law, and provided that orders not placed through*  
 4332 *statewide contracts shall be processed directly or by integration or interface through the*  
 4333 *Commonwealth's electronic procurement system;*

4334 *ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement*  
 4335 *system; and*

4336 *iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is*  
 4337 *consistent with the Commonwealth's SWAM program.*

4338 *E. Implementation.*

4339 *To effect its implementation under the Act, and if the College remains in continued substantial*  
 4340 *compliance with the terms and conditions of this Management Agreement with the Commonwealth*  
 4341 *pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the College's*  
 4342 *procurement of goods, services, insurance, and construction, and the disposition of surplus materials*  
 4343 *shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2,*  
 4344 *except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information*  
 4345 *Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the Information Technology*  
 4346 *Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency*  
 4347 *requirements regarding disposition of surplus materials and distribution of proceeds from the sale or*  
 4348 *recycling of surplus materials in §§ 2.2-1124 and 2.2-1125; the requirement to purchase from the*  
 4349 *Department for the Blind and Vision Impaired (VIB) (§ 2.2-1117); and any other state statutes, rules,*  
 4350 *regulations or requirements relating to the procurement of goods, services, insurance, and construction,*  
 4351 *including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2 of the Code of*  
 4352 *Virginia, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of*  
 4353 *the Virginia Department of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title*  
 4354 *2.2 of the Code of Virginia, regarding the review and the oversight by the Division of Engineering and*  
 4355 *Buildings of the Virginia Department of General Services of contracts for the construction of College*  
 4356 *capital projects and construction-related professional services (§ 2.2-1132).*

4357 *V. COLLEGE PROCUREMENT POLICIES.*

4358 *A. General Competitive Principles.*

4359 *In connection with College procurements and the processes leading to award of contracts for goods,*  
 4360 *services, insurance, and construction, the College is committed to:*

4361 *Seeking competition to the maximum practical degree, taking into account the size of the anticipated*  
 4362 *procurement, the term of the resulting contract and the likely extent of competition;*

4363 *Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or*  
 4364 *the appearance of any impropriety;*

4365 *Making procurement rules clear in advance of any competition;*

4366 *Providing access to the College's business to all qualified vendors, firms and contractors, with no*  
 4367 *potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage*  
 4368 *in cooperative procurements and to meet special needs of the College;*

4369 *Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular*  
 4370 *vendor; and*

4371 *Providing for the free exchange of information between the College, vendors, firms or contractors*  
 4372 *concerning the goods or services sought and offered while preserving the confidentiality of proprietary*  
 4373 *information.*

4374 *B. Access to Records.*

4375 *Procurement records shall be available to citizens or to interested persons, firms or corporations in*  
 4376 *accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et*  
 4377 *seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to*  
 4378 *§ 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia*  
 4379 *Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.*

4380 *C. Cooperative Procurements and Alliances.*

4381 *In circumstances where the College determines and documents that statewide contracts for goods and*  
 4382 *services, including information technology and telecommunications goods and services, do not provide*  
 4383 *goods and services to the College that meet its business goals and objectives, the College is authorized*  
 4384 *to participate in cooperative procurements with other public or private organizations or entities,*  
 4385 *including other educational institutions, public-private partnerships, public bodies, charitable*  
 4386 *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 are furthered. In the event the College 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, or his designee, 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 his designee, shall take all necessary and reasonable steps to assure (i) that all College 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 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 College 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 College 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. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.**

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

**VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

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

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

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

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

*A. Protests, Appeals and Debarment.*

4448 The Rules and College implementing policies and procedures for procurements other than capital  
 4449 outlay shall include a process or processes for an administrative appeal by vendors, firms or  
 4450 contractors. Protests and appeals may challenge determinations of vendor, firm or contractor  
 4451 non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are  
 4452 filed within the times specified by the Rules. Remedies available shall be limited to reversal of the  
 4453 action challenged or, where a contract already being performed is declared void, compensation for the  
 4454 cost of performance up to the time of such declaration. The Rules and College implementing policies  
 4455 and procedures also may establish the basis and process for debarment of any vendor, firm or  
 4456 contractor.

4457 B. Prompt Payment of Contractors and Subcontractors.

4458 The Rules and College implementing policies and procedures shall include provisions related to  
 4459 prompt payment of outstanding invoices, which shall include payment of interest on properly-presented  
 4460 invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the  
 4461 lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The  
 4462 payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or  
 4463 the date established by the contract. All contracts also shall require prompt payment of subcontractors  
 4464 by the general contractor, upon receipt of payment by the College.

4465 C. Types of Procurements.

4466 The Rules and College implementing policies and procedures shall implement a system of competitive  
 4467 negotiation for professional services, as defined in the Rules, and shall implement purchasing  
 4468 procedures developed to maximize competition given the size and duration of the contract, and the needs  
 4469 of the College. Such policies and procedures may include special provisions for procurements such as  
 4470 emergency procurements, sole source procurements, brand name procurements, small purchases,  
 4471 procurements in which only one qualified vendor responds, and others.

4472 D. Approval and Public Notice of Procurements.

4473 The Rules and College implementing policies and procedures shall provide for approval of  
 4474 solicitation documents by an authorized individual and for reasonable public notice of procurements,  
 4475 given the size and nature of the need and the applicability of any Virginia Freedom of Information Act  
 4476 exemption.

4477 E. Administration of Contracts.

4478 The Rules and College implementing policies and procedures shall contain provisions related to the  
 4479 administration of contracts, including contract claims, modifications, extensions and assignments.

4480 F. Non-Discrimination.

4481 The Rules and College implementing policies and procedures shall provide for a non-discriminatory  
 4482 procurement process that prohibits discrimination because of race, religion, color, sex or national origin  
 4483 of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate  
 4484 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small  
 4485 businesses and to promote and encourage a diversity of suppliers.

4486

4487

#### ATTACHMENT 1

4488 Rules Governing Procurement of Goods, Services, Insurance, and Construction

4489 by a Public Institution of Higher Education of the Commonwealth of Virginia

4490 Governed by Subchapter 3 of the

4491 Restructured Higher Education Financial and Administrative Operations Act,

4492 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia

4493 In accordance with the provisions of the Restructured Higher Education Financial and  
 4494 Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of  
 4495 Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher  
 4496 education of the Commonwealth of Virginia that has entered into a Management Agreement with the  
 4497 Commonwealth pursuant to Subchapter 3 of the Act, has adopted the following Rules Governing  
 4498 Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods,  
 4499 services, insurance, and construction by the Institution, excluding the University of Virginia Medical  
 4500 Center:

4501 § 1. Purpose. - The purpose of these Rules is to enunciate the public policies pertaining to  
 4502 procurement of good, services, insurance, and construction by the Institution from nongovernmental  
 4503 sources, to include governmental procurement that may or may not result in monetary consideration for  
 4504 either party. These Rules shall apply whether the consideration is monetary or nonmonetary and  
 4505 regardless of whether the Institution, the contractor, or some third party is providing the consideration.

4506 § 2. Scope of Procurement Authority. - Subject to these Rules, and the Institution's continued  
 4507 substantial compliance with the terms and conditions of its Management Agreement with the  
 4508 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% 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.

"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 million; 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

4692 § 7;

4693 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;

4694 3. By the Institution for the construction of highways and any draining, dredging, excavation,  
4695 grading or similar work upon real property; or

4696 E. Upon a determination in writing that there is only one source practicably available for that  
4697 which is to be procured, a contract may be negotiated and awarded to that source without competitive  
4698 sealed bidding or competitive negotiation. The writing shall document the basis for this determination.  
4699 The Institution shall issue a written notice stating that only one source was determined to be practicably  
4700 available, and identifying that which is being procured, the contractor selected, and the date on which  
4701 the contract was or will be awarded. This notice shall be posted in a designated public area, which may  
4702 be the Department of General Services' website for the Commonwealth's central electronic procurement  
4703 system, or published in a newspaper of general circulation on the day the Institution awards or  
4704 announces its decision to award the contract, whichever occurs first. Public notice shall also be  
4705 published on the Department of General Services' website for the Commonwealth's central electronic  
4706 procurement system and may be published on other appropriate websites.

4707 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
4708 competitive negotiation; however, such procurement shall be made with such competition as is  
4709 practicable under the circumstances. A written determination of the basis for the emergency and for the  
4710 selection of the particular contractor shall be included in the contract file. The Institution shall issue a  
4711 written notice stating that the contract is being awarded on an emergency basis, and identifying that  
4712 which is being procured, the contractor selected, and the date on which the contract was or will be  
4713 awarded. This notice shall be posted in a designated public area, which may be the Department of  
4714 General Services' website for the Commonwealth's central electronic procurement system, or published  
4715 in a newspaper of general circulation on the day the Institution awards or announces its decision to  
4716 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may  
4717 also be published on the Department of General Services' website for the Commonwealth's central  
4718 electronic procurement system and other appropriate websites.

4719 G. The Institution may establish purchase procedures, if adopted in writing, not requiring  
4720 competitive sealed bids or competitive negotiation for single or term contracts for goods and services  
4721 other than professional services if the aggregate or the sum of all phases is not expected to exceed  
4722 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

4723 H. The Institution may establish purchase procedures, if adopted in writing, not requiring  
4724 competitive negotiation for single or term contracts for professional services if the aggregate or the sum  
4725 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide  
4726 for competition wherever practicable.

4727 I. Upon a determination made in advance by the Institution and set forth in writing that the  
4728 purchase of goods, products or commodities from a public auction sale is in the best interests of the  
4729 public, such items may be purchased at the auction, including online public auctions. The writing shall  
4730 document the basis for this determination.

4731 J. The purchase of goods or nonprofessional services, but not construction or professional services,  
4732 may be made by reverse auctioning.

4733 § 6. Cooperative procurement. -

4734 A. In circumstances where the Institution determines and documents that statewide contracts for  
4735 goods and services, including information technology and telecommunications goods and services, do  
4736 not provide goods and services to the Institution that meet its business goals and objectives, the  
4737 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement  
4738 arrangement on behalf of or in conjunction with public bodies, public or private health or educational  
4739 institutions, other public or private organizations or entities, including public-private partnerships,  
4740 charitable organizations, health care provider alliances or purchasing organizations or entities, or with  
4741 public agencies or institutions or group purchasing organizations of the several states, territories of the  
4742 United States, or the District of Columbia, for the purpose of combining requirements to effect cost  
4743 savings or reduce administrative expense in any acquisition of goods and services, other than  
4744 professional services. The Institution may purchase from any authority, department, agency, institution,  
4745 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not  
4746 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to  
4747 bid specified that the procurement was being conducted on behalf of other public bodies. In such  
4748 instances, deviation from the procurement procedures set forth in these Rules and the administrative  
4749 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of  
4750 the above, use of cooperative contracts shall conform to the business requirements of the  
4751 Commonwealth's electronic procurement system, including the requirement for payment of applicable  
4752 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 United States General Services Administration contract or a contract awarded by any other agency of the United States government; and

2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States 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 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

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

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

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

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

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

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

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

§ 10. Employment discrimination by contractor prohibited; required contract provisions. -

The Institution shall include in every contract of more than \$10,000 the following provisions:

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

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

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

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

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

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions.- The Institution shall include in every contract over \$10,000 the following provisions:

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

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

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

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

§ 14. Prequalification generally; prequalification for construction. -

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

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

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

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

At least 30 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 10 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 10 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, and 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

4936 decided by lot.

4937 B. Whenever any bidder is a resident of any other state and such state under its laws allows a  
 4938 resident contractor of that state a preference, a like preference may be allowed by the Institution to the  
 4939 lowest responsive and responsible bidder who is a resident of Virginia.

4940 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where  
 4941 goods are being offered, and existing price preferences have already been taken into account, preference  
 4942 shall be given to the bidder whose goods contain the greatest amount of recycled content.

4943 § 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract  
 4944 for coal to be purchased for use in the Institution with state funds, the Institution shall procure using  
 4945 competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering  
 4946 coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the  
 4947 low responsive and responsible bidder offering coal mined elsewhere.

4948 § 22. Preference for recycled paper and paper products used by the Institution. -

4949 A. In determining the award of any contract for paper and paper products to be purchased for use  
 4950 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable  
 4951 for the purpose intended, so long as the price is not more than 10% greater than the price of the low  
 4952 responsive and responsible bidder or offeror offering a product that does not qualify under subsection  
 4953 B.

4954 B. For purposes of this section, recycled paper and paper products means any paper or paper  
 4955 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

4956 § 23. Withdrawal of bid due to error. -

4957 A. A bidder for a public construction contract, other than a contract for construction or  
 4958 maintenance of public highways, may withdraw his bid from consideration if the price bid was  
 4959 substantially lower than the other bids due solely to a mistake in the bid, provided the bid was  
 4960 submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and  
 4961 was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of  
 4962 work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error  
 4963 or unintentional omission can be clearly shown by objective evidence drawn from inspection of original  
 4964 work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

4965 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from  
 4966 consideration if the price bid would have been substantially lower than the other bids due solely to the  
 4967 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of  
 4968 work, labor or material made directly in the compilation of a bid that shall be clearly shown by  
 4969 objective evidence drawn from inspection of original work papers, documents and materials used in the  
 4970 preparation of the bid sought to be withdrawn.

4971 One of the following procedures for withdrawal of a bid shall be selected by the Institution and  
 4972 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to  
 4973 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall  
 4974 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or  
 4975 designated official his original work papers, documents and materials used in the preparation of the bid  
 4976 within one day after the date fixed for submission of bids. The work papers shall be delivered by the  
 4977 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either  
 4978 instance, the work papers, documents and materials may be considered as trade secrets or proprietary  
 4979 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened  
 4980 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder  
 4981 shall have two hours after the opening of bids within which to claim in writing any mistake as defined  
 4982 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour  
 4983 period has elapsed. The mistake shall be proved only from the original work papers, documents and  
 4984 materials delivered as required herein.

4985 B. The Institution may establish procedures for the withdrawal of bids for other than construction  
 4986 contracts.

4987 C. No bid shall be withdrawn under this section when the result would be the awarding of the  
 4988 contract on another bid of the same bidder or of another bidder in which the ownership of the  
 4989 withdrawing bidder is more than 5%.

4990 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed  
 4991 to be the low bid.

4992 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or  
 4993 labor to or perform any subcontract or other work agreement for the person or firm to whom the  
 4994 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for  
 4995 which the withdrawn bid was submitted.

4996 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 of the Code of Virginia, 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 of the Code of Virginia.

§ 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 95% of the earned sum when payment is due, with no more than 5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

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

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

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

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

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

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

3. Provides for liquidated damages for delay; or

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

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

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

§ 28. Bid bonds. -

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million 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

5058 exceed 5% of the amount bid.

5059 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for  
5060 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

5061 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids  
5062 or proposals for construction contracts anticipated to be less than \$1 million.

5063 § 29. Performance and payment bonds. -

5064 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million  
5065 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to  
5066 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,  
5067 structures or other improvements to real property owned by the Institution, the contractor shall furnish  
5068 to the Institution the following bonds:

5069 1. Except for transportation-related projects, a performance bond in the sum of the contract amount  
5070 conditioned upon the faithful performance of the contract in strict conformity with the plans,  
5071 specifications and conditions of the contract. For transportation-related projects, such bond shall be in  
5072 a form and amount satisfactory to the Institution.

5073 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of  
5074 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom  
5075 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the  
5076 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor  
5077 supplied or performed in the furtherance of the work.

5078 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but  
5079 only for periods when the equipment rented is actually used at the site.

5080 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor  
5081 that are authorized to do business in Virginia.

5082 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

5083 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

5084 E. Nothing in this section shall preclude the Institution from requiring payment or performance  
5085 bonds for construction contracts below \$1 million.

5086 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish  
5087 a payment bond with surety thereon in the sum of the full amount of the contract with such  
5088 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are  
5089 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the  
5090 work provided for in the subcontract.

5091 § 30. Alternative forms of security. -

5092 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash  
5093 escrow in the face amount required for the bond.

5094 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the  
5095 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain  
5096 designated funds in the face amount required for the bid, payment or performance bond. Approval shall  
5097 be granted only upon a determination that the alternative form of security proffered affords protection  
5098 to the Institution equivalent to a corporate surety's bond.

5099 § 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or  
5100 performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for  
5101 Proposal.

5102 § 32. Action on performance bond. - No action against the surety on a performance bond shall be  
5103 brought by the Institution unless brought within one year after (i) completion of the contract, including  
5104 the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty  
5105 that gave rise to the action.

5106 § 33. Actions on payment bonds; waiver of right to sue. -

5107 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished  
5108 material in accordance with the contract documents in furtherance of the work provided in any contract  
5109 for which a payment bond has been given, and who has not been paid in full before the expiration of 90  
5110 days after the day on which the claimant performed the last of the labor or furnished the last of the  
5111 materials for which he claims payment, may bring an action on the payment bond to recover any  
5112 amount due him for the labor or material. The obligee named in the bond need not be named a party  
5113 to the action.

5114 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no  
5115 contractual relationship, express or implied, with the contractor, may bring an action on the  
5116 contractor's payment bond only if he has given written notice to the contractor within 180 days from the  
5117 day on which the claimant performed the last of the labor or furnished the last of the materials for  
5118 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 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

§ 35. Exemption for certain transactions. -

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

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

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

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

4. The University of Virginia Medical Center.

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

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

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

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



5180 B. For the purposes of this section, "faith-based organization" means a religious organization that is  
 5181 or applies to be a contractor to provide goods or services for programs funded by the block grant  
 5182 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
 5183 104-193.

5184 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this  
 5185 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's  
 5186 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based  
 5187 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of  
 5188 religious freedom by the recipients of such goods, services, or disbursements.

5189 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
 5190 purchase orders prominently display a nondiscrimination statement indicating that it does not  
 5191 discriminate against faith-based organizations.

5192 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any  
 5193 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on  
 5194 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on  
 5195 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as  
 5196 other organizations that contract with public bodies to account for the use of the funds provided;  
 5197 however, if the faith-based organization segregates public funds into separate accounts, only the  
 5198 accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in  
 5199 clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

5200 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,  
 5201 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent  
 5202 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to  
 5203 expenditures pursuant to contracts, if any, for the services of chaplains.

5204 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization  
 5205 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based  
 5206 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of  
 5207 a particular religion.

5208 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant  
 5209 to a contract between the Institution and a faith-based organization, objects to the religious character of  
 5210 the faith-based organization from which the individual receives or would receive the goods, services, or  
 5211 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date  
 5212 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

5213 The Institution shall provide to each individual who applies for or receives goods, services, or  
 5214 disbursements provided pursuant to a contract between the Institution and a faith-based organization a  
 5215 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based  
 5216 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's  
 5217 charitable or religious character, practices, or expression. No provider of services may discriminate  
 5218 against you on the basis of religion, a religious belief, or your refusal to actively participate in a  
 5219 religious practice. If you object to a particular provider because of its religious character, you may  
 5220 request assignment to a different provider. If you believe that your rights have been violated, please  
 5221 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

5222 § 37. Exemptions from competition for certain transactions. -

5223 The Institution may enter into contracts without competition, as that term is described in subsections  
 5224 A through J of § 5 (Methods of procurement) of these Rules, for:

5225 1. The purchase of goods or services that are produced or performed by or related to:

5226 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the  
 5227 Blind and Vision Impaired;

5228 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or  
 5229 supported employment services serving the handicapped;

5230 c. Private educational institutions; or

5231 d. Other public educational institutions.

5232 2. Speakers and performing artists;

5233 3. Memberships and Association dues;

5234 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of  
 5235 goods or services by the Institution;

5236 5. Group travel in foreign countries;

5237 6. Conference facilities and services;

5238 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,  
 5239 registration and tournament fees;

5240 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) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution..

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

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

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

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

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

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

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

§ 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.

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

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

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

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

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

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

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

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,

5302 interest shall accrue at the rate of 1% per month."

5303 Any such contract awarded shall further require the contractor to include in each of its subcontracts  
5304 a provision requiring each subcontractor to include or otherwise be subject to the same payment and  
5305 interest requirements with respect to each lower-tier subcontractor.

5306 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment  
5307 clause in this section shall not be construed to be an obligation of the Institution. A contract  
5308 modification shall not be made for the purpose of providing reimbursement for the interest charge. A  
5309 cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

5310 § 46. Interest penalty; exceptions. -

5311 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by  
5312 the Institution to a vendor that remain unpaid after seven days following the payment date. However,  
5313 nothing in this section shall affect any contract providing for a different rate of interest, or for the  
5314 payment of interest in a different manner.

5315 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on  
5316 corporate loans (prime rate) at large United States money center commercial banks as reported daily in  
5317 the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of  
5318 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of  
5319 interest established pursuant to § 58.1-1812 of the Code of Virginia.

5320 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed  
5321 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of  
5322 delivery of goods or services or the accuracy of any invoice received for the goods or services. The  
5323 exception from the interest penalty provided by this subsection shall apply only to that portion of a  
5324 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of  
5325 the disagreement.

5326 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the  
5327 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a  
5328 contractor from receiving interest on such funds under an approved escrow agreement.

5329 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or  
5330 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the  
5331 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the  
5332 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is  
5333 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue  
5334 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven  
5335 days following the payment date.

5336 § 47. Ineligibility. -

5337 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from  
5338 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the  
5339 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the  
5340 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,  
5341 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so  
5342 requested by the bidder within five business days after receipt of the notice.

5343 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
5344 challenging the evaluation. The Institution shall issue its written determination of disqualification or  
5345 ineligibility based on all information in the possession of the Institution, including any rebuttal  
5346 information, within five business days of the date the Institution received such rebuttal information.

5347 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to  
5348 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the  
5349 evaluation reveals that the bidder should be refused permission to participate, or disqualified from  
5350 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The  
5351 notice shall state the basis for the determination, which shall be final unless the bidder appeals the  
5352 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the  
5353 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided  
5354 in § 54.

5355 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in  
5356 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be  
5357 restoration of eligibility.

5358 § 48. Appeal of denial of withdrawal of bid. -

5359 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final  
5360 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by  
5361 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by  
5362 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 10 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 10 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 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

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

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

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

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

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or

at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 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 60 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 30 days of receipt of the written decision.

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

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

## EXHIBIT K

### MANAGEMENT AGREEMENT BETWEEN

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

POLICY GOVERNING  
 HUMAN RESOURCES FOR  
 PARTICIPATING COVERED EMPLOYEES  
 AND OTHER COLLEGE EMPLOYEES

THE RECTOR AND VISITORS OF  
 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA  
 POLICY GOVERNING HUMAN RESOURCES FOR  
 PARTICIPATING COVERED EMPLOYEES  
 AND OTHER COLLEGE EMPLOYEES

I. PREAMBLE.

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

The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by 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 (State Agency 204) and the Virginia Institute of Marine Science, formerly known as (State Agency 268).

"College employee" means a Covered Employee.

"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 College 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 College.

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

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

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

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

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

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

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

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

### 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. COLLEGE OF WILLIAM & MARY HUMAN RESOURCES SYSTEMS.

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

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

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

appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.

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

1. The current "College of William and Mary Faculty Handbook," as it is posted on the Provost's website, <http://www.wm.edu/provost/index.php>, and periodically amended; and

2. The current human resources system for Classified Employees in the College as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>; and

3. The human resources system for Participating Covered Employees, which shall include non-salaried (wage) employees, as posted on the College Human Resources web site, <http://www.wm.edu/hr.html> and periodically amended.

All the systems describe above, except the system described in paragraph 3, may be amended by the President, consistent with these human resources policies. The system described in paragraph 3 may be amended only by the State.

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

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

#### VI. HUMAN RESOURCES POLICIES.

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

A. Election by College Salaried Nonfaculty Employees.

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

*General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of College financial resources. The plans adopted by the College 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 College shall provide information on its classification and compensation plans to all College 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 College's compensation plans.*

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

*Compensation Plan. The Systems shall include one or more compensation plans for each College employee classification or group. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the College shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the College, 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 College 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 College employees shall be authorized and approved only by designated College officers delegated such authority by the College, 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 College employees, including alternative work schedules and sites, and telecommuting policies and procedures.*

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

*C. Benefits.*

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

1. 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.

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

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

4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing 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.

5. 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.

6. 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.

7. 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 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for

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

10. *Grievance Procedure.* As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their 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 College 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 College's initial Management Agreement with the Commonwealth. On that Effective Date, and until changed by the College, 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. All Covered Employees and applicants for employment after the Effective Date of the College's initial Management Agreement with the Commonwealth shall file a complaint with the appropriate College office or with the appropriate federal agencies.

12. *Layoff Policy.* The Systems shall include one or more layoff policies for salaried College employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the College. These College 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 College or its respective major divisions and within other parts of the College, (v) the preferential employment rights, if any, of various College 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, College employees who: (i) were employed prior to the Effective Date of the College'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 College 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 College'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 College has adopted a classification system pursuant to § 23-38.116 of the Act that differs from the classification system administered by the Department of Human Resource Management, the College shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The College may include separate policies for reasonably distinguishable groups of College employees. On or after the Effective Date of the College's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the College under the provisions of the State Layoff Policy shall be Participating Covered Employees.

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

5912 force to which severance or Workforce Transition Act policies would apply.

5913 14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i)  
 5914 establish and maintain a work environment at the College that is free from the adverse effect of alcohol  
 5915 and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the  
 5916 College of William & Mary Alcohol and Other Drugs Policy, (iii) describe the range of authorized  
 5917 disciplinary action, including termination where appropriate, for violations of such policies and  
 5918 procedures, and the process to be followed in taking such disciplinary action, (iv) provide College  
 5919 employees access to assistance and treatment for problems involving alcohol and other drugs, (v)  
 5920 provide for the circumstances under which employees are required to report certain violations of the  
 5921 policies and procedures to their supervisor, and the College is required to report those violations to a  
 5922 federal contracting or granting agency, (vi) describe the circumstances under which personnel records  
 5923 of actions taken under the College's alcohol and other drugs policy shall not be kept confidential, and  
 5924 (vii) provide notice to College employees of the scope and content of the College alcohol and other  
 5925 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal  
 5926 Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment,  
 5927 reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing  
 5928 for College positions that are particularly safety sensitive, such as those requiring a Commercial  
 5929 Driver's License.

5930 15. *Background Checks.* The Systems shall include a process for conducting background checks,  
 5931 which may include but is not limited to reference checks, educational/ professional credentialing checks,  
 5932 and conviction and driver's records checks on applicants for full-time or part-time positions at the  
 5933 College, and for addressing situations where employees do not disclose a conviction on their application  
 5934 or otherwise falsify their application with regard to information concerning their education/professional  
 5935 credential and/or prior convictions.

5936 16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other  
 5937 reasonable employee relations policies or procedures that the President deems appropriate, which may  
 5938 include, but are not limited to, policies or procedures relating to orientation programs for new or  
 5939 re-employed College employees, an employee suggestion program, the responsibility of College  
 5940 employees for property placed in their charge, work breaks, inclement weather and emergencies, and  
 5941 employment outside the College.

5942 *E. Leave and Release Time.*

5943 The Systems shall include policies and procedures regarding leave for eligible employees. The  
 5944 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal  
 5945 uses. The Systems may provide for release time for such matters as the donation of blood, participation  
 5946 in an employee assistance program and other appropriate employment-related matters. On or after the  
 5947 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is  
 5948 adopted by the appropriate authority, the College shall continue to provide leave and release time to  
 5949 Participating Covered Employees in accordance with the leave and release time policies and procedures  
 5950 applicable to each classification of employees prior to that Effective Date. On or after that Effective  
 5951 Date, the College may provide an alternative leave and release time system for salaried nonfaculty  
 5952 Participating Covered Employees.

5953 *F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

5954 1. *Equal Employment Opportunity and Nondiscrimination.* The Systems shall contain policies and  
 5955 procedures to ensure that all aspects of human resources management, including the employment of  
 5956 College employees, meet all requirements of federal and state law, and of the relevant policies of the  
 5957 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

5958 *Employment.* The Systems shall include policies and procedures for the recruitment, selection and  
 5959 hiring of College employees that are based on merit and fitness, including where appropriate a  
 5960 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference  
 5961 checks and conviction record checks. On and after the Effective Date of its initial Management  
 5962 Agreement with the Commonwealth, the College shall post all salaried nonfaculty position vacancies  
 5963 through the College's job posting system, the Commonwealth's job posting system, and other external  
 5964 media as appropriate. The Systems shall establish designated veterans' re-employment rights in  
 5965 accordance with applicable law.

5966 In order to encourage employees to attain the highest level positions for which they are qualified,  
 5967 and to compensate employees for accepting positions of increased value and responsibility, the Systems  
 5968 shall include policies and procedures governing the promotion of employees, including the effect of  
 5969 promotion on an employee's compensation.

5970 On or after the Effective Date of the College's initial Management Agreement with the  
 5971 Commonwealth, all employees hired from other state agencies shall be Participating Covered  
 5972 Employees. College Classified Employees who change jobs within the College through a competitive

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

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

#### G. Information Systems.

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

On and after the Effective Date of its initial Management Agreement with the Commonwealth, College employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the College. 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 College employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to College personnel unless College 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

##### Memorandum of Understanding

##### Between The College of William and Mary 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 College Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between the College of William and Mary and the Department of Human Resource Management (DHRM).

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

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

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

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



4. Other reports to be provided by the College include the following:  
a. Monthly Employment Position Report.  
b. Annual report on salaried, wage, and contract employees.  
The undersigned hereby agree to the provisions contained in the MOU.

APPROVALS:

The College of William and Mary:

By: .....Date.....  
Vice President for Administration

Department of Human Resources Management:

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

EXHIBIT L

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

POLICY GOVERNING  
FINANCIAL OPERATIONS AND MANAGEMENT

THE RECTOR AND BOARD OF VISITORS  
OF THE COLLEGE OF WILLIAM AND MARY  
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the College of William and Mary's financial operations and management.

This Policy is intended to cover the authority that may be granted to the College pursuant to 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 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and

missions of the College.

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

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

### III. SCOPE OF POLICY.

This Policy applies to the College'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 College's financial resources.

The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it is implemented by the College on behalf of the Institute, but the Institute 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 College'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 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. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, or designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of College financial resources. These policies shall continue to (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 College 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 College 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 College's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the College, the accounting and bookkeeping system of the College shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.

In addition, the financial management system shall continue to provide financial reporting for the President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the College. Upon the Effective Date of the initial Management Agreement between the College and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the College shall not be required to record its financial transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing with CARS, or be a part of any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The College's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule,

and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

#### VI. FINANCIAL MANAGEMENT POLICIES.

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

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

#### VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

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

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

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the College is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary 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) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the College's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the College has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the College may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the College 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 College does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.

v) Beginning on the effective date of its initial Management Agreement with the College until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the College 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.

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 College may draw down all cash balances held by the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.

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

The College 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 College that the College 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 College that the College 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 College 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, 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-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% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;

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

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

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

The College's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College 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 College.

## X. DEBT MANAGEMENT.

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

Pursuant to § 23-38.108(B) of the Act, the College 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 College 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 College.

The College 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, or designee, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the College's objectives. Regardless of the financing structure(s) utilized, the President, or designee, 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 College 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 of Visitors, providing that they do not constitute State Tax Supported Debt.

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

#### XI. INVESTMENT POLICY.

It is the policy of the College to invest its operating and reserve funds solely in the interest of the College 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 College's operating and reserve funds.

#### XII. INSURANCE AND RISK MANAGEMENT.

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 insurance or risk management program made 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 subdivision 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 subdivision 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.

#### 6415 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:

#### 6420 ARTICLE 1. DEFINITIONS.

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

"Academic Division" means that part of the University known as (State Agency 207).

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

"Agreement" means "Management Agreement."

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

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

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

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

"Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.

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

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

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

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

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

#### 6451 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

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



responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.

**SECTION 2.1.1. Assessments and Accountability.** *The University 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 M through R, 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 University agree that the Commonwealth has expressly granted to the University by this Management Agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of the University attached hereto as Exhibits M through R and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit M), (2) the leasing of property, including capital leases (Exhibit N), (3) information technology (Exhibit O), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit P), (5) human resources (Exhibit Q), and (6) its system of financial management (Exhibit R), 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 M through 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.** *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 subdivision D (2) (c) of § 23-38.88 of the Act, the University has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to the University and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.*

**SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act.** *Pursuant to § 23-38.110 of the Act, and subject to the provisions of this Management Agreement, the University may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles*

and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § 23-38.110 of the Act.

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

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

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

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

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

**SECTION 2.1.9. Exercise of Authority.** The University and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the University the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the University shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it

by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits M through R, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R.

The University 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 University shall assume full responsibility for management of the University, 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 University 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 of the Code of Virginia, prior to August 1, 2005, the Board of Visitors of the University 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 University commits to furthering these State goals by:

1. In addition to its six-year target of achieving \$337 million in external research by 2011-12, the University commits to match from institutional funds, other than general funds or tuition, 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 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-

6644 and lower-income Virginia students in a manner that encourages student enrollment and progression  
 6645 without respect to potential increases in tuition and fees. The University's commitment in this regard is  
 6646 clear.

6647 The Academic Division will continue to offer enrollment to in-state undergraduate students without  
 6648 regard to ability to pay and shall continue implementation of AccessUVA, a financial aid program  
 6649 designed to keep higher education affordable for all undergraduate students, including Virginians and  
 6650 non-Virginians, who qualify for admission, regardless of economic circumstance. In the fall 2005  
 6651 AccessUVA was modified to provide expanded benefits for qualifying Virginia Community College  
 6652 System transfer students. The program shall be substantially as described in the remainder of this  
 6653 Section 2.2.2, as may be amended from time to time by the Board of Visitors of the University and  
 6654 reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on  
 6655 Finance and the House Committee on Appropriations.

6656 The Academic Division currently offers financial aid packages to meet 100% of demonstrated need to  
 6657 all qualified undergraduate students. This goal was met in 2004-05.

6658 The Academic Division will eliminate all need-based loans, replacing them with grants, in the  
 6659 financial-aid packages of low-income undergraduate students, beginning with the fall 2004 entering  
 6660 class. At this time low-income is defined as families with an income equivalent to 200% of the federal  
 6661 poverty line or less. This phase will be fully implemented by fall 2007. The University's goals for this  
 6662 component of the program include:

- 6663 1. Increase enrollment by low-income students.
- 6664 2. Improve the socio-economic diversity at the University.
- 6665 3. Enable low-income financial aid recipients to have an enhanced student experience.
- 6666 4. Improve satisfaction in post graduate choices of low-income financial aid recipients.

6667 Success in attaining these goals will be measured by five metrics, 1) applications from low-income  
 6668 students, 2) low-income applicants offered admissions, 3) low-income applicants who accepted offers, 4)  
 6669 yield of low-income students, and 5) percentage of low-income students in the student body. In 2005-06  
 6670 applications from low-income students rose 13.1% from the previous year for a total of 875. The  
 6671 University offered admission to 357 applicants, 10% more than in the prior year. Almost 40% more of  
 6672 those low-income students to whom the University offered admission for the 2005-06 academic year  
 6673 accepted the offer, 233 compared to 133 last year, increasing the yield from 50% to over 64%. The  
 6674 trend in the percentage of low-income students in the student body has also improved over the last two  
 6675 years increasing from 4.29% in 2004-05 to 6.45% in 2005-06. The University expects to increase the  
 6676 numbers of low-income students enrolled from the current 830 to 1,033 by 2011-12 as outlined in the  
 6677 Six-Year Plan.

6678 The Academic Division will cap the amount of need-based loans to any undergraduate student who  
 6679 qualifies for some form of financial aid to a maximum of 25% of the total in-state cost of attendance  
 6680 over four years and will meet the remaining need with grants, beginning with the fall 2005 first-year or  
 6681 VCCS transfer students. All students, regardless of state residency, will receive the in-state cap level.  
 6682 This phase will be fully implemented by fall 2008. This particular component of the program is targeted  
 6683 at middle-income students whose families earn between \$75,000 and \$149,999. The University's goals  
 6684 for this component of the program include:

- 6685 1. Improve the socio-economic diversity at the University.
- 6686 2. Enable financial aid recipients to have an enhanced student experience.
- 6687 3. Improve satisfaction in post graduate choices.

6688 Success will be measured in this area by three metrics, 1) applications from middle-income students,  
 6689 2) participation of financial aid recipients in study abroad, internships, volunteer work, student  
 6690 activities, etc., and 3) post graduate choices and starting salaries. Seven percent or 219 more  
 6691 middle-income students applied to the University in 2005-06 than in 2004-05 and qualified for  
 6692 AccessUVA benefits.

6693 The Academic Division will provide comprehensive counseling to prospective and current students  
 6694 and their families, assisting them in the financial aid application process and presenting them with  
 6695 financing options outside of need-based financial aid. This last component of the program has three  
 6696 main goals:

- 6697 1. Improve the perception of the University as affordable.
- 6698 2. Increase the socio-economic diversity of the University.
- 6699 3. Improve student understanding of financial planning and debt management.

6700 The University's financial aid educational programs are currently being designed. We expect to  
 6701 measure trends in the following ways in order to gauge success: 1) usage figures of educational  
 6702 programs provided on financial planning and debt management, 2) percent of financial aid applicants  
 6703 participating in financial management programs, and 3) evaluation of effectiveness of the educational  
 6704 programs.

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

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

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

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

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

6766 *SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the*  
 6767 *Board of Visitors policies attached hereto as Exhibits M through R shall be reported to the Secretaries*  
 6768 *of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on*  
 6769 *Finance and the House Committee on Appropriations and shall be posted on the University's website.*  
 6770 *The change or deviation shall become effective unless one of the above persons notifies the University in*  
 6771 *writing within 60 days that the change or deviation is substantial and material. Any substantial and*  
 6772 *material change or deviation shall require the execution by the parties of an amendment to this*  
 6773 *Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of*  
 6774 *§ 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to*  
 6775 *subdivision D 4 of § 23-38.88 of the Act.*

6776 *SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.*

6777 *SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § 23-38.88, and § 23-38.98, of the Act, if*  
 6778 *the Governor makes a written determination that the University is not in substantial compliance with the*  
 6779 *terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor*  
 6780 *shall provide a copy of that written determination to the Rector of the Board of Visitors of the*  
 6781 *University and to the members of the General Assembly, and (ii) the University shall develop and*  
 6782 *implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into*  
 6783 *substantial compliance with the terms of this Management Agreement and with the requirements of the*  
 6784 *Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of*  
 6785 *the General Assembly. If after a reasonable period of time after the corrective action plan has been*  
 6786 *implemented by the University, the Governor determines that the institution is not yet in substantial*  
 6787 *compliance with this Management Agreement or the requirements of the Act, the Governor may void this*  
 6788 *Management Agreement. Upon the Governor voiding this Management Agreement, the University shall*  
 6789 *no longer be allowed to exercise any restructured financial or operational authority pursuant to the*  
 6790 *provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent*  
 6791 *management agreement with the Secretary or Secretaries designated by the Governor or the voided*  
 6792 *Management Agreement is reinstated by the General Assembly.*

6793 *SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § 23-38.88 of the Act, the*  
 6794 *General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to*  
 6795 *§ 23-38.98 of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the*  
 6796 *Act may be revoked by an act of the General Assembly (i) if the University fails to meet the*  
 6797 *requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this*  
 6798 *Management Agreement.*

6799 *ARTICLE 4. GENERAL PROVISIONS.*

6800 *SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied,*  
 6801 *shall be construed as conferring any third-party beneficiary status on any person or entity.*

6802 *SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § 23-38.88 of the Act, the*  
 6803 *University and the members of its Board of Visitors, officers, directors, employees, and agents shall be*  
 6804 *entitled to the same sovereign immunity to which they would be entitled if the University were not*  
 6805 *governed by the Act; provided that the Virginia Tort Claims Act, (§ 8.01-195.1 et seq.) of the Code of*  
 6806 *Virginia, and its limitations on recoveries shall remain applicable with respect to the University.*

6807 *SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June*  
 6808 *30, 2010.*

6809 *WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of*  
 6810 *November, 2005, and shall become effective on the effective date of legislation enacted into law*  
 6811 *providing for the terms of such Agreement.*

#### 6812 *EXHIBIT M*

#### 6813 *MANAGEMENT AGREEMENT* 6814 *BETWEEN* 6815 *THE COMMONWEALTH OF VIRGINIA* 6816 *AND*

#### 6817 *THE UNIVERSITY OF VIRGINIA* 6818 *PURSUANT TO* 6819 *THE RESTRUCTURED HIGHER EDUCATION* 6820 *FINANCIAL AND ADMINISTRATIVE OPERATIONS* 6821 *ACT OF 2005*

#### 6822 *POLICY GOVERNING CAPITAL PROJECTS*

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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



6888 Center (State Agency 209), and related health care and health maintenance facilities.

6889 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section  
6890 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from  
6891 general government funds, as defined in the December 20, 2004 Report to the Governor and General  
6892 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

6893 "University" means the University of Virginia, consisting of the Academic Division, the College, and  
6894 the Medical Center.

### 6895 III. SCOPE OF POLICY.

6896 This Policy applies to the planning and budget development for capital projects, capital project  
6897 authorization, and the implementation of capital projects, whether funded by a general fund  
6898 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other  
6899 sources.

6900 This Policy provides guidance for 1) the process for developing one or more capital project  
6901 programs for the University, 2) authorization of new capital projects, 3) procurement of Capital  
6902 Professional Services and construction services, 4) design reviews and code approvals for capital  
6903 projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land  
6904 acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting  
6905 requirements.

### 6906 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

6907 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the  
6908 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
6909 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
6910 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
6911 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,  
6912 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
6913 implementation of those duties and responsibilities pursuant to the University's usual delegation policies  
6914 and procedures.

### 6915 V. CAPITAL PROGRAM.

6916 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt  
6917 a system for developing one or more capital project programs that defines or define the capital needs of  
6918 the University for a given period of time consistent with the University's published Master Plan. This  
6919 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of  
6920 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be  
6921 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from  
6922 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board  
6923 may approve amendments to the program for Major Capital Projects annually or more often if  
6924 circumstances warrant.

6925 It shall be University policy that each capital project program shall meet the University's mission  
6926 and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be  
6927 University policy that each capital project shall be of a size and scope to provide for the defined  
6928 program needs, designed in accordance with all applicable building codes and handicapped accessibility  
6929 standards as well as the University's design guidelines and standards, and costed to reflect current costs  
6930 and escalated to the mid-point of anticipated construction.

### 6931 VI. AUTHORIZATION OF CAPITAL PROJECTS

6932 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its  
6933 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief  
6934 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other  
6935 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund  
6936 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both  
6937 Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies  
6938 then applicable, and shall follow the State's process for capital budget requests.

6939 It shall be the policy of the University that the implementation of capital projects shall be carried  
6940 out so that the capital project as completed is the capital project approved by the Board for Major  
6941 Capital Projects and according to the procedures adopted by the President, acting through the  
6942 Executive Vice President and Chief Operating Officer, for all other capital projects. The President,  
6943 acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence  
6944 to this requirement.

6945 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond  
6946 the plans and justifications that were the basis for the capital project's approval, either before or during  
6947 construction, unless approved in advance as described above. Minor changes shall be permissible if  
6948 they are determined by the President, acting through the Executive Vice President and Chief Operating

Officer, to be justified.

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

## VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.

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

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

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

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;

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

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

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

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

A prequalification procedure for contractors or products;

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

A prompt payment procedure.

The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, 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 the Executive Vice President and Chief Operating Officer, 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 University'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, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital

7010 project and that such capital project has been inspected by the State Fire Marshal or his designee.  
 7011 When serving as the University Building Official, such individual shall organizationally report directly  
 7012 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it  
 7013 shall fulfill the code review requirement by maintaining a review unit supported by resources and staff  
 7014 who are certified by the Department of Housing and Community Development in accordance with  
 7015 § 36-137 of the Code of Virginia, for such purpose and who shall review plans, specifications and  
 7016 documents for compliance with building codes and standards and perform required inspections of work  
 7017 in progress and the completed capital project. No individual licensed professional architect or engineer  
 7018 hired or contracted with to perform these functions shall also perform other building code-related  
 7019 design, construction, facilities-related project management or facilities management functions for the  
 7020 University on the same capital project.

#### 7021 IX. ENVIRONMENTAL IMPACT REPORTS.

7022 It shall be the policy of the University to assess the environmental, historic preservation, and  
 7023 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts  
 7024 to the extent practicable. The University shall develop a procedure for the preparation and approval of  
 7025 environmental impact reports for capital projects, in accordance with State environmental, historic  
 7026 preservation, and conservation requirements generally applicable to capital projects otherwise meeting  
 7027 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of  
 7028 \$300,000 or more.

#### 7029 X. BUILDING DEMOLITIONS.

7030 It shall be the policy of the University to consider the environmental and historical aspects of any  
 7031 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.  
 7032 The University shall develop a procedure for the preparation and review of demolition requests,  
 7033 including any necessary reviews by the Department of Historic Resources and the Art and Architectural  
 7034 Review Board in accordance with State historic preservation requirements generally applicable to  
 7035 capital projects in the Commonwealth. Further, for any property that was acquired or constructed with  
 7036 funding from a general fund appropriation of the General Assembly or from proceeds from State Tax  
 7037 Supported Debt, general laws applicable to State owned property shall apply.

#### 7038 XI. BUILDING OR LAND ACQUISITIONS.

7039 It is the policy of the University that capital projects involving building or land acquisition shall be  
 7040 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real  
 7041 property. The President, acting through the Executive Vice President and Chief Operating Officer, shall  
 7042 ensure that the project management system implemented pursuant to Section XIII below provides for a  
 7043 review and analysis of all pertinent matters relating to the acquisition of buildings and land as any  
 7044 prudent purchaser would perform to the end that any building or land acquired by the University shall  
 7045 be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability  
 7046 to the University and that the cost of the real property to be acquired, together with any contemplated  
 7047 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is  
 7048 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating  
 7049 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies  
 7050 pertaining to the acquisition of buildings or land for capital projects are carried out.

##### 7051 A. Environmental and Land Use Considerations.

7052 It is the policy of the University to reasonably cooperate with each locality affected by the  
 7053 acquisition. Such cooperation shall include but not be limited to furnishing any information that the  
 7054 locality may reasonably request and reviewing any requests by the locality with regard to any such  
 7055 acquisition. The University shall consider the zoning and comprehensive plan designation by the  
 7056 locality of the building or land and surrounding parcels, as well as any designation by State or federal  
 7057 agencies of historically or archeologically significant areas on the land. Nothing herein shall be  
 7058 construed as requiring the University to comply with local zoning laws and ordinances.

##### 7059 B. Infrastructure and Site Condition.

7060 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure  
 7061 that, in the case of capital projects involving the acquisition of buildings or land, the project  
 7062 management systems implemented under Section XIII below provide for a review of the following  
 7063 matters prior to acquisition of the building or land: that any land can be developed for its intended  
 7064 purpose without extraordinary cost; that an environmental engineer has been engaged by the University  
 7065 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular  
 7066 ingress and egress to serve the contemplated use of the building or land; that utilities and other services  
 7067 to the land are adequate or can reasonably be provided or have been provided in the case of building  
 7068 acquisitions; and that the condition and grade of the soils have been examined to determine if any  
 7069 conditions exist that would require extraordinary site work or foundation systems.

##### 7070 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 N*

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

*POLICY GOVERNING  
LEASES OF REAL PROPERTY*

**THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING LEASES OF REAL PROPERTY**

**I. PREAMBLE.**

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

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

**II. DEFINITIONS.**

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

"Academic Division" means that part of the University known as (State Agency 207).

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

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

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

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

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

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

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

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

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

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

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

**III. SCOPE OF POLICY.**

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

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

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

**V. REQUIREMENTS FOR LEASES.**

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

All Leases shall be for a purpose consistent with the mission of the University. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that

may be adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the space is intended.

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

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

*C. Approval of Form of Lease Required.*

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

*D. Execution of Leases.*

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

*E. Capital Leases.*

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

*F. Compliance with Applicable Law.*

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

*G. Certification of Occupancy.*

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

## EXHIBIT 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 of the Code of Virginia; 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

7254 Technology Policy pursuant to § 23-38.111 of the Code of Virginia.

7255 II. DEFINITIONS.

7256 As used in this Information Technology Policy, the following terms have the following meanings,  
7257 unless the context requires otherwise:

7258 "Academic Division" means that part of the University known as (State Agency 207).

7259 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
7260 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7261 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

7262 "College" means that part of the University operated as the University of Virginia's College at Wise,  
7263 also known as (State Agency 246).

7264 "Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the  
7265 Code of Virginia as it currently exists and from time to time may be amended.

7266 "Major information technology project" or "major IT project" shall have the same meaning as set  
7267 forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

7268 "Medical Center" means that part of the University consisting of the University of Virginia Medical  
7269 Center, known as (State Agency 209), and related health care and health maintenance facilities.

7270 "Policy" means this Information Technology Policy adopted by the Board of Visitors.

7271 "State Chief Information Officer" or "State CIO" means the Chief Information Officer of the  
7272 Commonwealth of Virginia.

7273 "University" means the University of Virginia, consisting of the Academic Division, the College, and  
7274 the Medical Center.

7275 III. SCOPE OF POLICY.

7276 This Policy is intended to cover and implement the authority that may be granted to the University of  
7277 Virginia pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect  
7278 any other powers and authorities granted to the University pursuant to the Appropriation Act and the  
7279 Code of Virginia, including other provisions of the Act or the University's enabling legislation as that  
7280 term is defined in § 23-38.89 of the Act. In particular, other powers and authorities granted to the  
7281 University of Virginia Medical Center by law, to the extent they exceed those granted to the University  
7282 pursuant to Subchapter 3 of the Act, are not affected by this Policy.

7283 This Policy shall govern the University's information technology strategic planning, expenditure  
7284 reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and  
7285 audits conducted within, by, or on behalf of the University. Upon the effective date of a Management  
7286 Agreement between the Commonwealth and the University, as authorized by subsection D of § 23-38.88  
7287 and § 23-38.111, therefore, the University shall be exempt from those provisions of the Code of Virginia,  
7288 including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies  
7289 Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24  
7290 of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology  
7291 strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture,  
7292 ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided,  
7293 however, that the University still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et  
7294 seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information  
7295 Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to  
7296 public institutions of higher education of the Commonwealth and that do not govern information  
7297 technology strategic planning, expenditure reporting, budgeting, project management, infrastructure,  
7298 architecture, ongoing operations, security, and audits within, by, or on behalf of the University.

7299 The procurement of information technology and telecommunications goods and services, including  
7300 automated data processing hardware and software, shall be governed by the Policy Governing the  
7301 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials  
7302 approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and  
7303 Construction that are incorporated in and attached to that Policy.

7304 IV. GENERAL PROVISIONS.

7305 A. Board of Visitors Accountability and Delegation of Authority.

7306 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the  
7307 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
7308 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
7309 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
7310 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,  
7311 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
7312 implementation of those duties and responsibilities pursuant to the University's usual delegation policies  
7313 and procedures.

7314 B. Strategic Planning.



*The President, acting through the Executive Vice President and Chief Operating 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 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*

7376 Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific  
 7377 circumstances of the University. Copies of the policies shall be made available to the Information  
 7378 Technology Investment Board.

7379 The President, acting through the executive Vice President and Chief Operating Officer, shall be  
 7380 responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended  
 7381 and revised from time to time.

7382 For purposes of implementing this Policy, the President shall appoint an existing University  
 7383 employee to serve as a liaison between the University and the State CIO.

7384 F. Audits.

7385 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines  
 7386 developed by the Commonwealth or those based upon industry best practices for project auditing as  
 7387 defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing  
 7388 association, appropriately tailored to the specific circumstances of the University, which provide for  
 7389 Independent Validation and Verification (IV&V) of the University's major IT projects. Copies of the  
 7390 policies, standards, and guidelines, as amended and revised from time to time, shall be made available  
 7391 to the Information Technology Investment Board.

7392 Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure,  
 7393 architecture, ongoing operations, and security, shall also be the responsibility of the University's  
 7394 Internal Audit Department and the Auditor of Public Accounts.

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## EXHIBIT P

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### MANAGEMENT AGREEMENT

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#### BETWEEN

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THE COMMONWEALTH OF VIRGINIA

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#### AND

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THE UNIVERSITY OF VIRGINIA

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#### PURSUANT TO

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THE RESTRUCTURED HIGHER EDUCATION

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FINANCIAL AND ADMINISTRATIVE OPERATIONS

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ACT OF 2005

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#### POLICY GOVERNING

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THE PROCUREMENT OF GOODS, SERVICES,

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INSURANCE, AND CONSTRUCTION AND

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THE DISPOSITION OF SURPLUS MATERIALS

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THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

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POLICY GOVERNING THE PROCUREMENT OF

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GOODS, SERVICES, INSURANCE AND CONSTRUCTION

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AND THE DISPOSITION OF SURPLUS MATERIALS

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#### I. PREAMBLE.

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A. Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) provided the University of Virginia with autonomy to conduct the procurement of goods and services, including professional services, and construction, on behalf of the University of Virginia Medical Center. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that the University of Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing 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. 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 and the College, as well as a surplus materials disposition system for the University as a whole, and to

7498 *continue the existing procurement system and policies of the Medical Center. Any University electronic*  
 7499 *procurement system, other than the Medical Center's electronic procurement system, shall integrate or*  
 7500 *interface with the Commonwealth's electronic procurement system.*

7501 *This Policy shall be effective on the Effective Date of the University's initial Management Agreement*  
 7502 *with the Commonwealth. The implementing policies and procedures adopted by the President, acting*  
 7503 *through the Executive Vice President and Chief Operating Officer or his designee, to implement this*  
 7504 *Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting*  
 7505 *procurements at the University, including policies regarding the nature and amounts of procurements*  
 7506 *that may be undertaken without the approval of the Board of Visitors, or of the President, acting*  
 7507 *through the Executive Vice President and Chief Operating Officer.*

7508 *B. Scope and Purpose of University Procurement Policies.*

7509 *This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be*  
 7510 *the policy of the University that procurements conducted by the University result in the purchase of high*  
 7511 *quality goods and services at reasonable prices, and that the University be free, to the maximum extent*  
 7512 *permitted by law and this Policy, from constraining policies that hinder the ability of the University to*  
 7513 *do business in a competitive environment. This Policy, together with the Rules Governing Procurement*  
 7514 *of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to*  
 7515 *all procurements undertaken by the University, regardless of the source of funds.*

7516 *C. Collaboration, Communication, and Cooperation with the Commonwealth.*

7517 *The University is committed to developing, maintaining, and sustaining collaboration,*  
 7518 *communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy,*  
 7519 *particularly with the Offices of the Secretaries of Administration and Technology, the Department of*  
 7520 *General Services, and the Virginia Information Technologies Agency. Identifying business objectives and*  
 7521 *goals common to both the University and the Commonwealth and the mechanisms by which such*  
 7522 *objectives and goals may be jointly pursued and achieved are among the desired outcomes of such*  
 7523 *collaboration, communication, and cooperation.*

7524 *D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

7525 *The University is committed to maximizing its internal operational efficiencies, economies of scale*  
 7526 *among institutions of higher education, and the leveraged buying power of the Commonwealth as a*  
 7527 *whole.*

7528 *Consistent with this commitment, the University:*

7529 *i) May purchase from and participate in all statewide contracts for goods and services, including*  
 7530 *information technology goods and services, except that the University shall purchase from and*  
 7531 *participate in contracts for communications services and telecommunications facilities entered into by*  
 7532 *the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia, unless an*  
 7533 *exception is provided in the Appropriation Act or by other law, and provided that orders not placed*  
 7534 *through statewide contracts shall be processed directly or by integration or interface through the*  
 7535 *Commonwealth's electronic procurement system;*

7536 *ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement*  
 7537 *system and comply with the business plan for the Commonwealth's electronic procurement system, as*  
 7538 *modified by an agreement between the Commonwealth and the University, which agreement shall not be*  
 7539 *substantially different than the agreement attached to this Policy as Attachment 2 ; and*

7540 *iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is*  
 7541 *consistent with the Commonwealth's SWAM program.*

7542 *E. Implementation.*

7543 *To effect its implementation under the Act, and if the University remains in continued substantial*  
 7544 *compliance with the terms and conditions of this Management Agreement with the Commonwealth*  
 7545 *pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the University's*  
 7546 *procurement of goods, services, insurance, and construction, and the disposition of surplus materials*  
 7547 *shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2,*  
 7548 *except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information*  
 7549 *Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the Information Technology*  
 7550 *Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency*  
 7551 *requirements regarding disposition of surplus materials and distribution of proceeds from the sale or*  
 7552 *recycling of surplus materials in §§ 2.2-1124 and 2.2-1125; the requirement to purchase from the*  
 7553 *Department for the Blind and Vision Impaired (VIB) (§ 2.2-1117); and any other state statutes, rules,*  
 7554 *regulations or requirements relating to the procurement of goods, services, insurance, and construction,*  
 7555 *including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the*  
 7556 *duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department*  
 7557 *of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2 of the Code of*  
 7558 *Virginia, regarding the review and the oversight by the Division of Engineering and Buildings of the*

7559 Virginia Department of General Services of contracts for the construction of University capital projects  
7560 and construction-related professional services (§ 2.2-1132).

7561 V. UNIVERSITY PROCUREMENT POLICIES.

7562 A. General Competitive Principles.

7563 In connection with University procurements and the processes leading to award of contracts for  
7564 goods, services, insurance, and construction, the University is committed to:

7565 Seeking competition to the maximum practical degree, taking into account the size of the anticipated  
7566 procurement, the term of the resulting contract and the likely extent of competition;

7567 Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or  
7568 the appearance of any impropriety;

7569 Making procurement rules clear in advance of any competition;

7570 Providing access to the University's business to all qualified vendors, firms and contractors, with no  
7571 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage  
7572 in cooperative procurements and to meet special needs of the University;

7573 Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular  
7574 vendor; and

7575 Providing for the free exchange of information between the University, vendors, firms or contractors  
7576 concerning the goods or services sought and offered while preserving the confidentiality of proprietary  
7577 information.

7578 B. Access to Records.

7579 Procurement records shall be available to citizens or to interested persons, firms or corporations in  
7580 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 *et*  
7581 *seq.*) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to  
7582 § 2.2-3705.1 (7), 2.2-3705.1 (12), or 2.2-3705.4 (4), or other applicable exemptions of the Virginia  
7583 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.

7584 C. Cooperative Procurements and Alliances.

7585 In circumstances where the University determines and documents that statewide contracts for goods  
7586 and services, including information technology and telecommunications goods and services, do not  
7587 provide goods and services to the University that meet its business goals and objectives, the University  
7588 is authorized to participate in cooperative procurements with other public or private organizations or  
7589 entities, including other educational institutions, public-private partnerships, public bodies, charitable  
7590 organizations, health care provider alliances and purchasing organizations, so long as the resulting  
7591 contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing  
7592 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1  
7593 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative  
7594 contract with a private organization or public-private partnership and the contract was not competitively  
7595 procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods,  
7596 Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by  
7597 other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the  
7598 above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's  
7599 electronic procurement system, including the requirement for payment of applicable fees. By October 1  
7600 of each year, the President, acting through the Executive Vice President and Chief Operating Officer,  
7601 shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit  
7602 and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and  
7603 alliances entered into or used during the prior fiscal year.

7604 D. Training; Ethics in Contracting.

7605 The President, acting through the Executive Vice President and Chief Operating Officer, shall take  
7606 all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged  
7607 in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of  
7608 the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement  
7609 Act, Article 6 (§ 2.2-4367 *et seq.*) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only  
7610 officials authorized by this Policy and any procedures adopted by the President, acting through the  
7611 Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and  
7612 engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.

7613 The University shall maintain an ongoing program to provide professional development opportunities  
7614 to its buying staff and to provide methods training to internal staff who are engaged in placing  
7615 decentralized small purchase transactions.

7616 E. Ethics and University Procurements.

7617 In implementing the authority conferred by this Policy, the personnel administering any procurement  
7618 shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting  
7619 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 *et seq.*) of Chapter 43 of Title

2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2.

#### VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

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

#### VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

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

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

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

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

##### A. Protests, Appeals and Debarment.

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

##### B. Prompt Payment of Contractors and Subcontractors.

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

##### C. Types of Procurements.

The Rules and University implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, 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 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% 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



7742 general partnership interest shall be deemed to be a voting security.

7743 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,  
7744 and various elements of required services that in total are optimal relative to the Institution's needs.

7745 "Business" means any type of corporation, partnership, limited liability company, association, or sole  
7746 proprietorship operated for profit.

7747 "Competitive negotiation" is a method of contractor selection that includes the following elements:

7748 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be  
7749 procured, specifying the factors that will be used in evaluating the proposal and containing or  
7750 incorporating by reference the other applicable contractual terms and conditions, including any unique  
7751 capabilities or qualifications that will be required of the contractor.

7752 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of  
7753 proposals by publication in a newspaper or newspapers of general circulation in the area in which the  
7754 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that  
7755 can be reasonably anticipated to submit proposals in response to the particular request. Public notice  
7756 also shall be published on the Department of General Services' central electronic procurement website  
7757 and may be published on other appropriate websites. In addition, proposals may be solicited directly  
7758 from potential contractors.

7759 3. a. Procurement of professional services. The procurement of professional services for capital  
7760 projects shall be conducted using a qualification-based selection process. The Institution shall engage  
7761 in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on  
7762 the basis of initial responses and with emphasis on professional competence, to provide the required  
7763 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to  
7764 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed  
7765 project, as well as alternative concepts. The Request for Proposal shall not, however, request that  
7766 offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may  
7767 discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and  
7768 where appropriate, nonbinding estimates of price for services. Proprietary information from competing  
7769 offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined  
7770 in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all  
7771 information developed in the selection process to this point, the Institution shall select in the order of  
7772 preference two or more offerors whose professional qualifications and proposed services are deemed  
7773 most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a  
7774 contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair  
7775 and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror  
7776 ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and  
7777 so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution  
7778 determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror  
7779 is clearly more highly qualified and suitable than the others under consideration, a contract may be  
7780 negotiated and awarded to that offeror.

7781 A contract for architectural or professional engineering services relating to construction projects may  
7782 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience  
7783 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under  
7784 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of  
7785 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the  
7786 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set  
7787 in the Request for Proposal. Any unused amounts from any contract term may be carried forward.  
7788 Competitive negotiations for such contracts may result in awards to more than one offeror provided the  
7789 Request for Proposal stated the potential for a multi-vendor award.

7790 Multiphase professional services contracts satisfactory and advantageous to the Institution for  
7791 environmental, location, design and inspection work regarding construction of infrastructure projects  
7792 may be negotiated and awarded based on qualifications at a fair and reasonable price for the first  
7793 phase only, when completion of the earlier phases is necessary to provide information critical to the  
7794 negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such  
7795 contract, the Institution shall state the anticipated intended total scope of the project and determine in  
7796 writing that the nature of the work is such that the best interests of such Institution require awarding  
7797 the contract.

7798 b. Procurement of other than professional services. Selection shall be made of two or more offerors  
7799 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the  
7800 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
7801 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered,  
7802 but need not be the sole determining factor. After negotiations have been conducted with each offeror

so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.

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

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

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

3. Public opening and announcement of all bids received.

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

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

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

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

"Covered Institution" or "Institution" means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.

"Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.

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

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; 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,

7864 post, commission, committee, institution, board or political subdivision created by law to exercise some  
 7865 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
 7866 activities described in these Rules.

7867 "Public contract" means an agreement between the Institution and a nongovernmental source that is  
 7868 enforceable in a court of law.

7869 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform  
 7870 fully the contract requirements and the moral and business integrity and reliability that will assure good  
 7871 faith performance, and who has been prequalified, if required.

7872 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects  
 7873 to the Invitation to Bid.

7874 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative  
 7875 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7876 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction  
 7877 adopted by the governing body of the Covered Institution.

7878 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
 7879 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
 7880 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
 7881 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
 7882 established for bid opening.

7883 "Services" means any work performed by an independent contractor wherein the service rendered  
 7884 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials  
 7885 and supplies.

7886 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working  
 7887 environment and individual goals that utilizes work experience and related services for assisting the  
 7888 handicapped person to progress toward normal living and a productive vocational status.

7889 § 5. Methods of procurement. -

7890 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for  
 7891 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,  
 7892 or competitive negotiation as provided in this section, unless otherwise authorized by law.

7893 B. Professional services shall be procured by competitive negotiation. Qualification-based selection  
 7894 shall be used for design services.

7895 C. Goods, services, or insurance may be procured by competitive negotiation.

7896 D. Construction may be procured only by competitive sealed bidding, except that competitive  
 7897 negotiation may be used in the following instances upon a determination made in advance by the  
 7898 Institution and set forth in writing that competitive sealed bidding is either not practicable or not  
 7899 fiscally advantageous to the public, which writing shall document the basis for this determination:

7900 1. By the Institution on a fixed price design-build basis or construction management basis under  
 7901 § 7;

7902 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;

7903 3. By the Institution for the construction of highways and any draining, dredging, excavation,  
 7904 grading or similar work upon real property; or

7905 E. Upon a determination in writing that there is only one source practicably available for that  
 7906 which is to be procured, a contract may be negotiated and awarded to that source without competitive  
 7907 sealed bidding or competitive negotiation. The writing shall document the basis for this determination.  
 7908 The Institution shall issue a written notice stating that only one source was determined to be practicably  
 7909 available, and identifying that which is being procured, the contractor selected, and the date on which  
 7910 the contract was or will be awarded. This notice shall be posted in a designated public area, which may  
 7911 be the Department of General Services' website for the Commonwealth's central electronic procurement  
 7912 system, or published in a newspaper of general circulation on the day the Institution awards or  
 7913 announces its decision to award the contract, whichever occurs first. Public notice shall also be  
 7914 published on the Department of General Services' website for the Commonwealth's central electronic  
 7915 procurement system and may be published on other appropriate websites.

7916 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
 7917 competitive negotiation; however, such procurement shall be made with such competition as is  
 7918 practicable under the circumstances. A written determination of the basis for the emergency and for the  
 7919 selection of the particular contractor shall be included in the contract file. The Institution shall issue a  
 7920 written notice stating that the contract is being awarded on an emergency basis, and identifying that  
 7921 which is being procured, the contractor selected, and the date on which the contract was or will be  
 7922 awarded. This notice shall be posted in a designated public area, which may be the Department of  
 7923 General Services' website for the Commonwealth's central electronic procurement system, or published  
 7924 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 United States General Services Administration contract or a contract awarded by any other agency of the United States government; and

2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States 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 25% of the amount of

7986 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's  
 7987 president or his designee. In no event may the amount of any contract, without adequate consideration,  
 7988 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of  
 7989 an error in its bid or offer.

7990 B. The Institution may extend the term of an existing contract for services to allow completion of  
 7991 any work undertaken but not completed during the original term of the contract.

7992 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract  
 7993 modifications.

7994 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

7995 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
 7996 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis  
 7997 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the  
 7998 Institution shall include businesses selected from a list made available by the Department of Minority  
 7999 Business Enterprise.

8000 B. The Institution shall establish programs consistent with this section to facilitate the participation  
 8001 of small businesses and businesses owned by women and minorities in procurement transactions. The  
 8002 programs established shall be in writing and shall include cooperation with the Department of Minority  
 8003 Business Enterprise, the United States Small Business Administration, and other public or private  
 8004 agencies. The Institution shall submit annual progress reports on minority business procurement to the  
 8005 Department of Minority Business Enterprise.

8006 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
 8007 analysis that documents a statistically significant disparity between the availability and utilization of  
 8008 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require  
 8009 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing  
 8010 law.

8011 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
 8012 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination  
 8013 that employing ex-offenders on the specific contract is not in its best interest.

8014 § 10. Employment discrimination by contractor prohibited; required contract provisions. - The  
 8015 Institution shall include in every contract of more than \$10,000 the following provisions:

8016 1. During the performance of this contract, the contractor agrees as follows:

8017 a. The contractor will not discriminate against any employee or applicant for employment because  
 8018 of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law  
 8019 relating to discrimination in employment, except where there is a bona fide occupational qualification  
 8020 reasonably necessary to the normal operation of the contractor. The contractor agrees to post in  
 8021 conspicuous places, available to employees and applicants for employment, notices setting forth the  
 8022 provisions of this nondiscrimination clause.

8023 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the  
 8024 contractor, will state that such contractor is an equal opportunity employer.

8025 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation  
 8026 shall be deemed sufficient for the purpose of meeting the requirements of this section.

8027 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every  
 8028 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
 8029 subcontractor or vendor.

8030 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The  
 8031 Institution shall include in every contract over \$10,000 the following provisions:

8032 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace  
 8033 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for  
 8034 employment, a statement notifying employees that the unlawful manufacture, sale, distribution,  
 8035 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's  
 8036 workplace and specifying the actions that will be taken against employees for violations of such  
 8037 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the  
 8038 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the  
 8039 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be  
 8040 binding upon each subcontractor or vendor.

8041 For the purposes of this section, "drug-free workplace" means a site for the "performance of work  
 8042 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the  
 8043 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,  
 8044 dispensation, possession or use of any controlled substance or marijuana during the performance of the  
 8045 contract.

8046 § 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 30 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 10 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 10 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

8108 substantially similar law of the United States or another state;

8109 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an  
8110 established debarment procedure from bidding or contracting by any public body, agency of another  
8111 state or agency of the federal government; and

8112 7. The contractor failed to provide to the Institution in a timely manner any information requested  
8113 by the Institution relevant to subdivisions 1 through 6 of this subsection.

8114 § 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid  
8115 from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest  
8116 responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to  
8117 obtain a contract price within available funds. However, the negotiation may be undertaken only under  
8118 conditions and procedures described in writing and approved by the Institution prior to issuance of the  
8119 Invitation to Bid and summarized therein.

8120 § 16. Cancellation, rejection of bids; waiver of informalities. -

8121 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or  
8122 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of  
8123 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,  
8124 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a  
8125 particular responsive and responsible bidder or offeror.

8126 B. The Institution may waive informalities in bids.

8127 § 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no  
8128 insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus  
8129 lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to  
8130 the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall  
8131 preclude the Institution from debarring a prospective insurer pursuant to § 18.

8132 § 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of  
8133 supplies, services, insurance or construction, for specified periods of time. Any debarment procedure  
8134 shall be established in writing by the Institution. Any debarment procedure may provide for debarment  
8135 on the basis of a contractor's unsatisfactory performance for the Institution.

8136 § 19. Purchase programs for recycled goods; Institution responsibilities. -

8137 A. The Institution may implement a purchase program for recycled goods and may coordinate its  
8138 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and  
8139 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

8140 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets  
8141 Development Council, shall advise the Institution concerning the designation of recycled goods.

8142 § 20. Preference for Virginia products with recycled content and for Virginia firms. -

8143 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or  
8144 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be  
8145 decided by lot.

8146 B. Whenever any bidder is a resident of any other state and such state under its laws allows a  
8147 resident contractor of that state a preference, a like preference may be allowed by the Institution to the  
8148 lowest responsive and responsible bidder who is a resident of Virginia.

8149 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where  
8150 goods are being offered, and existing price preferences have already been taken into account, preference  
8151 shall be given to the bidder whose goods contain the greatest amount of recycled content.

8152 § 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract  
8153 for coal to be purchased for use in the Institution with state funds, the Institution shall procure using  
8154 competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering  
8155 coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the  
8156 low responsive and responsible bidder offering coal mined elsewhere.

8157 § 22. Preference for recycled paper and paper products used by the Institution. -

8158 A. In determining the award of any contract for paper and paper products to be purchased for use  
8159 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable  
8160 for the purpose intended, so long as the price is not more than 10% greater than the price of the low  
8161 responsive and responsible bidder or offeror offering a product that does not qualify under subsection  
8162 B.

8163 B. For purposes of this section, recycled paper and paper products means any paper or paper  
8164 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

8165 § 23. Withdrawal of bid due to error. -

8166 A. A bidder for a public construction contract, other than a contract for construction or  
8167 maintenance of public highways, may withdraw his bid from consideration if the price bid was  
8168 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 5%.

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 of the Code of Virginia, 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 of the Code of Virginia.

§ 26. Retainage on construction contracts. -

8230 A. In any contract issued by the Institution for construction that provides for progress payments in  
 8231 installments based upon an estimated percentage of completion, the contractor shall be paid at least  
 8232 95% of the earned sum when payment is due, with no more than 5% being retained to ensure faithful  
 8233 performance of the contract. All amounts withheld may be included in the final payment.

8234 B. Any subcontract for a public project that provides for similar progress payments shall be subject  
 8235 to the provisions of this section.

8236 § 27. Public construction contract provisions barring damages for unreasonable delays declared  
 8237 void. -

8238 A. Any provision contained in any public construction contract of the Institution that purports to  
 8239 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable  
 8240 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the  
 8241 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to  
 8242 causes within their control shall be void and unenforceable as against public policy.

8243 B. Subsection A shall not be construed to render void any provision of a public construction  
 8244 contract awarded by the Institution that:

8245 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the  
 8246 contractor, or its subcontractors, agents or employees;

8247 2. Requires notice of any delay by the party claiming the delay;

8248 3. Provides for liquidated damages for delay; or

8249 4. Provides for arbitration or any other procedure designed to settle contract disputes.

8250 C. A contractor making a claim against the Institution for costs or damages due to the alleged  
 8251 delaying of the contractor in the performance of its work under any public construction contract of the  
 8252 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the  
 8253 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage  
 8254 shall be equal to the percentage of the contractor's total delay claim that is determined through  
 8255 litigation or arbitration to be false or to have no basis in law or in fact.

8256 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of  
 8257 the contractor in the performance of work under any public construction contract for the Institution, it  
 8258 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to  
 8259 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution  
 8260 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is  
 8261 determined through litigation or arbitration to have been made in bad faith.

8262 § 28. Bid bonds. -

8263 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1  
 8264 million shall be accompanied by a bid bond from a surety company selected by the bidder that is  
 8265 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he  
 8266 will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not  
 8267 exceed 5% of the amount bid.

8268 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for  
 8269 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

8270 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids  
 8271 or proposals for construction contracts anticipated to be less than \$1 million.

8272 § 29. Performance and payment bonds. -

8273 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million  
 8274 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to  
 8275 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,  
 8276 structures or other improvements to real property owned by the Institution, the contractor shall furnish  
 8277 to the Institution the following bonds:

8278 1. Except for transportation-related projects, a performance bond in the sum of the contract amount  
 8279 conditioned upon the faithful performance of the contract in strict conformity with the plans,  
 8280 specifications and conditions of the contract. For transportation-related projects, such bond shall be in  
 8281 a form and amount satisfactory to the Institution.

8282 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of  
 8283 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom  
 8284 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the  
 8285 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor  
 8286 supplied or performed in the furtherance of the work.

8287 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but  
 8288 only for periods when the equipment rented is actually used at the site.

8289 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor  
 8290 that are authorized to do business in Virginia.

- 8291 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.  
 8292 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.  
 8293 E. Nothing in this section shall preclude the Institution from requiring payment or performance  
 8294 bonds for construction contracts below \$1 million.  
 8295 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish  
 8296 a payment bond with surety thereon in the sum of the full amount of the contract with such  
 8297 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are  
 8298 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the  
 8299 work provided for in the subcontract.  
 8300 § 30. Alternative forms of security. -  
 8301 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash  
 8302 escrow in the face amount required for the bond.  
 8303 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the  
 8304 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain  
 8305 designated funds in the face amount required for the bid, payment or performance bond. Approval shall  
 8306 be granted only upon a determination that the alternative form of security proffered affords protection  
 8307 to the Institution equivalent to a corporate surety's bond.  
 8308 § 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or  
 8309 performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for  
 8310 Proposal.  
 8311 § 32. Action on performance bond. - No action against the surety on a performance bond shall be  
 8312 brought by the Institution unless brought within one year after (i) completion of the contract, including  
 8313 the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty  
 8314 that gave rise to the action.  
 8315 § 33. Actions on payment bonds; waiver of right to sue. -  
 8316 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished  
 8317 material in accordance with the contract documents in furtherance of the work provided in any contract  
 8318 for which a payment bond has been given, and who has not been paid in full before the expiration of 90  
 8319 days after the day on which the claimant performed the last of the labor or furnished the last of the  
 8320 materials for which he claims payment, may bring an action on the payment bond to recover any  
 8321 amount due him for the labor or material. The obligee named in the bond need not be named a party  
 8322 to the action.  
 8323 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no  
 8324 contractual relationship, express or implied, with the contractor, may bring an action on the  
 8325 contractor's payment bond only if he has given written notice to the contractor within 180 days from the  
 8326 day on which the claimant performed the last of the labor or furnished the last of the materials for  
 8327 which he claims payment, stating with substantial accuracy the amount claimed and the name of the  
 8328 person for whom the work was performed or to whom the material was furnished. Notice to the  
 8329 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to  
 8330 such contractor at any place where his office is regularly maintained for the transaction of business.  
 8331 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not  
 8332 be subject to the time limitations stated in this subsection.  
 8333 C. Any action on a payment bond shall be brought within one year after the day on which the  
 8334 person bringing such action last performed labor or last furnished or supplied materials.  
 8335 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless  
 8336 it is in writing, signed by the person whose right is waived, and executed after such person has  
 8337 performed labor or furnished material in accordance with the contract documents.  
 8338 § 34. Public inspection of certain records. -  
 8339 A. Except as provided in this section, all proceedings, records, contracts and other public records  
 8340 relating to procurement transactions shall be open to the inspection of any citizen, or any interested  
 8341 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et  
 8342 seq.).  
 8343 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution  
 8344 shall not be open to public inspection.  
 8345 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect  
 8346 bid records within a reasonable time after the opening of all bids but prior to award, except in the  
 8347 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,  
 8348 bid records shall be open to public inspection only after award of the contract.  
 8349 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect  
 8350 proposal records within a reasonable time after the evaluation and negotiations of proposals are  
 8351 completed but prior to award, except in the event that the Institution decides not to accept any of the

8352 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection  
8353 only after award of the contract.

8354 E. Any inspection of procurement transaction records under this section shall be subject to  
8355 reasonable restrictions to ensure the security and integrity of the records.

8356 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in  
8357 connection with a procurement transaction or prequalification application submitted pursuant to  
8358 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et  
8359 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to  
8360 or upon submission of the data or other materials, (ii) identify the data or other materials to be  
8361 protected, and (iii) state the reasons why protection is necessary.

8362 § 35. Exemption for certain transactions. -

8363 A. The provisions of these Rules shall not apply to:

8364 1. The selection of services related to the management and investment of the Institution's endowment  
8365 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be  
8366 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by  
8367 § 23-76.1.

8368 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the  
8369 Institution. However, such purchase procedures shall provide for competition where practicable.

8370 3. Procurement of any construction or planning and design services for construction by the  
8371 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
8372 obligated to conform to procurement procedures that are established by federal statutes or regulations,  
8373 whether or not those federal procedures are in conformance with the provisions of these Rules.

8374 4. The University of Virginia Medical Center.

8375 5. The purchase of goods and services by the Institution when such purchases are made under a  
8376 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

8377 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
8378 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
8379 regulations not in conformance with the provisions of these Rules, the Institution may comply with such  
8380 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination  
8381 of the Institution's President or his designee that acceptance of the grant or contract funds under the  
8382 applicable conditions is in the public interest. Such determination shall state the specific provision of  
8383 these Rules in conflict with the conditions of the grant or contract.

8384 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

8385 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into  
8386 contracts with faith-based organizations for the purposes described in this section on the same basis as  
8387 any other nongovernmental source without impairing the religious character of such organization, and  
8388 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

8389 B. For the purposes of this section, "faith-based organization" means a religious organization that is  
8390 or applies to be a contractor to provide goods or services for programs funded by the block grant  
8391 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
8392 104-193.

8393 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this  
8394 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's  
8395 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based  
8396 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of  
8397 religious freedom by the recipients of such goods, services, or disbursements.

8398 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
8399 purchase orders prominently display a nondiscrimination statement indicating that it does not  
8400 discriminate against faith-based organizations.

8401 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any  
8402 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on  
8403 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on  
8404 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as  
8405 other organizations that contract with public bodies to account for the use of the funds provided;  
8406 however, if the faith-based organization segregates public funds into separate accounts, only the  
8407 accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in  
8408 clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

8409 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,  
8410 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent  
8411 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to  
8412 expenditures pursuant to contracts, if any, for the services of chaplains.

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

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

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

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:

1. The purchase of goods or services that are produced or performed by or related to:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
  - c. Private educational institutions; or
  - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
8. Royalties; or
9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

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

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

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

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

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 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.

8474 § 40. *Exemptions.* - The provisions of §§ 39 through 46 shall not apply to the late payment  
 8475 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

8476 § 41. *Retainage to remain valid.* - Notwithstanding the provisions of §§ 39 through 46, the  
 8477 provisions of § 26 relating to retainage shall remain valid.

8478 § 42. *Prompt payment of bills by the Institution.* -

8479 A. The Institution shall promptly pay for the completely delivered goods or services by the required  
 8480 payment date.

8481 Payment shall be deemed to have been made when offset proceedings have been instituted, as  
 8482 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

8483 B. Separate payment dates may be specified for contracts under which goods or services are  
 8484 provided in a series of partial deliveries or executions to the extent that such contract provides for  
 8485 separate payment for such partial delivery or execution.

8486 § 43. *Defect or impropriety in the invoice or goods and/or services received.* - In instances where  
 8487 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall  
 8488 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by  
 8489 the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or  
 8490 services.

8491 § 44. *Date of postmark deemed to be date payment is made.* - In those cases where payment is made  
 8492 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these  
 8493 Rules.

8494 § 45. *Payment clauses to be included in contracts.* - Any contract awarded by the Institution shall  
 8495 include:

8496 1. A payment clause that obligates the contractor to take one of the two following actions within  
 8497 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the  
 8498 subcontractor under that contract:

8499 a. Pay the subcontractor for the proportionate share of the total payment received from the  
 8500 Institution attributable to the work performed by the subcontractor under that contract; or

8501 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of  
 8502 the subcontractor's payment with the reason for nonpayment.

8503 2. A payment clause that requires (i) individual contractors to provide their social security numbers  
 8504 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification  
 8505 numbers.

8506 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all  
 8507 amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor  
 8508 of payment from the Institution for work performed by the subcontractor under that contract, except for  
 8509 amounts withheld as allowed in subdivision 1.

8510 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,  
 8511 interest shall accrue at the rate of 1% per month."

8512 Any such contract awarded shall further require the contractor to include in each of its subcontracts  
 8513 a provision requiring each subcontractor to include or otherwise be subject to the same payment and  
 8514 interest requirements with respect to each lower-tier subcontractor.

8515 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment  
 8516 clause in this section shall not be construed to be an obligation of the Institution. A contract  
 8517 modification shall not be made for the purpose of providing reimbursement for the interest charge. A  
 8518 cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

8519 § 46. *Interest penalty; exceptions.* -

8520 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by  
 8521 the Institution to a vendor that remain unpaid after seven days following the payment date. However,  
 8522 nothing in this section shall affect any contract providing for a different rate of interest, or for the  
 8523 payment of interest in a different manner.

8524 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on  
 8525 corporate loans (prime rate) at large United States money center commercial banks as reported daily in  
 8526 the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of  
 8527 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of  
 8528 interest established pursuant to § 58.1-1812 of the Code of Virginia.

8529 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed  
 8530 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of  
 8531 delivery of goods or services or the accuracy of any invoice received for the goods or services. The  
 8532 exception from the interest penalty provided by this subsection shall apply only to that portion of a  
 8533 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of  
 8534 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 10 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 10 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 10 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 10 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



8596 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

8597 3. Such notice shall state the basis for the determination, which shall be final unless the bidder  
8598 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures  
8599 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action  
8600 as provided in § 54.

8601 The provisions of this subsection shall not apply to procurements involving the prequalification of  
8602 bidders and the rights of any potential bidders under such prequalification to appeal a decision that  
8603 such bidders are not responsible.

8604 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the  
8605 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in  
8606 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or  
8607 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the  
8608 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or  
8609 directed award as provided in subsection A of § 54, or both.

8610 If it is determined that the decision of the Institution was not an honest exercise of discretion, but  
8611 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable  
8612 state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract  
8613 has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

8614 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract  
8615 shall proceed under this section, and may not protest the award or proposed award under the  
8616 provisions of § 50 of these Rules.

8617 D. Nothing contained in this section shall be construed to require the Institution, when procuring by  
8618 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed  
8619 to be the most advantageous.

8620 § 50. Protest of award or decision to award. -

8621 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall  
8622 submit the protest in writing to the Institution, or an official designated by the Institution, no later than  
8623 10 days after the award or the announcement of the decision to award, whichever occurs first. Public  
8624 notice of the award or the announcement of the decision to award shall be given by the Institution in  
8625 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any  
8626 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to  
8627 protest the award or decision to award such contract shall submit the protest in the same manner no  
8628 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these  
8629 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part  
8630 upon information contained in public records pertaining to the procurement transaction that are subject  
8631 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall  
8632 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or  
8633 at such later time as provided in this section. No protest shall lie for a claim that the selected bidder  
8634 or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the  
8635 protest and the relief sought. The Institution or designated official shall issue a decision in writing  
8636 within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or  
8637 offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures  
8638 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action  
8639 as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the  
8640 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of  
8641 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the  
8642 standards of § 55 of these Rules.

8643 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then  
8644 the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise  
8645 it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary  
8646 or capricious, then the sole relief shall be as hereinafter provided.

8647 Where the award has been made but performance has not begun, the performance of the contract  
8648 may be enjoined. Where the award has been made and performance has begun, the Institution may  
8649 declare the contract void upon a finding that this action is in the best interest of the public. Where a  
8650 contract is declared void, the performing contractor shall be compensated for the cost of performance  
8651 up to the time of such declaration. In no event shall the performing contractor be entitled to lost  
8652 profits.

8653 C. Where the Institution, an official designated by it, or an appeals board determines, after a  
8654 hearing held following reasonable notice to all bidders, that there is probable cause to believe that a  
8655 decision to award was based on fraud or corruption or on an act in violation of these Rules, the  
8656 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 60 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

8718 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of  
8719 Accounts.

8720 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards  
8721 of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or  
8722 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same  
8723 procurement transaction unless the Institution agrees otherwise.

8724 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a  
8725 contractor.

8726 § 55. Administrative appeals procedure. -

8727 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to  
8728 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from  
8729 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes  
8730 arising during the performance of a contract, or (v) any of these. Such administrative procedure may  
8731 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a  
8732 disinterested person or panel, the opportunity to present pertinent information and the issuance of a  
8733 written decision containing findings of fact. The disinterested person or panel shall not be an employee  
8734 of the governmental entity against whom the claim has been filed. The findings of fact shall be final  
8735 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious;  
8736 (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the  
8737 findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14  
8738 of these Rules. No determination on an issue of law shall be final if appropriate legal action is  
8739 instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute  
8740 Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

8741 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute  
8742 judicial review if such action is brought within 30 days of receipt of the written decision.

8743 § 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes  
8744 arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and  
8745 other alternative dispute resolution procedures. However, such procedures shall be nonbinding and  
8746 subject to § 2.2-514 of the Code of Virginia, as applicable.

8747 § 57. Ethics in public contracting. - The Institution and its governing body, officers and employees  
8748 shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement  
8749 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

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## ATTACHMENT 2

### Memorandum of Agreement

#### The Commonwealth of Virginia and the University of Virginia

#### ERP/SciQuest Implementation with eVA

8755 The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the  
8756 following:

8757 I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system  
8758 (Oracle).

8759 II. Initially, all non-exempt orders produced by the ERP/SciQuest integration will be transmitted to  
8760 eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format.  
8761 Longer term a more real-time option may be mutually agreed by the Department of General  
8762 Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the  
8763 ERP and eVA systems.

8764 III. The University may request that eVA contract vendors provide a version of their contract catalog  
8765 for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog  
8766 through eVA, then the University will access these catalogs as described in item B8 of the Metrics  
8767 section of this document. In any event, the University shall be responsible for payment of all eVA  
8768 transaction fees for non-exempt orders to unregistered vendors and exempt orders the University  
8769 chooses to issue to unregistered and registered vendors through eVA.

8770 IV. eVA will load all non-exempt University orders into the eVA Data Warehouse. For clarity, it is  
8771 understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from  
8772 mandatory processing through eVA.

8773 V. In lieu of processing individual orders for requirements through eVA, a more efficient  
8774 administrative approach is to establish a blanket or standing order. The University is authorized to use  
8775 such an approach where it makes good business sense. The University will ensure vendors understand  
8776 that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the  
8777 transaction fee will be based on the total order amount, and the vendor is required to pay the total  
8778 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.

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

The University further agrees that:

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

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

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

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

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

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

Guidelines

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

2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

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

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

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

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

Schedule

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

Metrics

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

Objective

Ninety-five percent of all non-exempt orders to be processed by eVA. Includes non-exempt orders

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

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

1. Provide end users, including purchase-card users, access to an electronic system for buying;
2. Conduct business with eVA registered vendors whenever possible;
3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;
4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;
5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible.

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

The University further agrees that:

- 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

8962 Subchapter 3 of the Act.

8963 "Employee" means Covered Employee unless the context clearly indicates otherwise.

8964 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
8965 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
8966 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  
8967 case of the University of Virginia Medical Center.

8968 "Effective Date" means the effective date of the initial Management Agreement between the  
8969 University and the Commonwealth.

8970 "Existing Medical Center Policy Statement" means the Policy Statement Governing the Exercise of  
8971 Medical Center Personnel Autonomy adopted by the Board of Visitors in 1996.

8972 "Governing Law" means the Act and the University's Enabling Legislation.

8973 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act  
8974 between the University and the Commonwealth.

8975 "Medical Center" means that part of the University consisting of the University of Virginia Medical  
8976 Center (State Agency 209), and related health care and health maintenance facilities.

8977 "Medical Center Human Resources System" means the human resources system for Medical Center  
8978 employees as provided for herein.

8979 "Participating Covered Employee" means (i) all salaried nonfaculty University employees who were  
8980 employed as of the day prior to the Effective Date of the University's initial Management Agreement  
8981 with the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be  
8982 governed by such human resources program or programs, plans, policies, and procedures established by  
8983 [the Participating Institution], (ii) all salaried nonfaculty University employees who are employed by the  
8984 University on or after the Effective Date of the initial Management Agreement between the University  
8985 and the Commonwealth, (iii) all non-salaried nonfaculty University employees without regard to when  
8986 they were hired, (iv) all faculty University employees without regard to when they were hired, and (v)  
8987 all employees of the University of Virginia Medical Center without regard to when they were hired.

8988 "Systems" mean collectively the Academic Division Human Resources System, the College Human  
8989 Resources System, and the Medical Center Human Resources System that are in effect from time to time.

8990 "University" means the University of Virginia, consisting of the Academic Division, the College, and  
8991 the Medical Center.

8992 "University employee" means a Covered Employee.

### 8993 III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

8994 The University has had human resources system autonomy through decentralization and codified  
8995 autonomy for its employees for some time. For example, general faculty at the University are expressly  
8996 exempt from the Virginia Personnel Act. The Academic Division and the College have had  
8997 decentralization in most human resources functions and activities since the late 1980s and early 1990s,  
8998 including, but not limited to, the running of payrolls; the administration of hiring, classification, and  
8999 promotion practices; the administration of separate health insurance and retirement plans. Effective  
9000 July 1, 1996, all Medical Center employees were exempted from the Virginia Personnel Act and the  
9001 policies and procedures of the Virginia Department of Human Resource Management (formerly the  
9002 Department of Personnel and Training). The Board of Visitors approved the Existing Medical Center  
9003 Policy Statement in 1996. A separate human resources system is in place for all Medical Center  
9004 employees, which the Board of Visitors hereby continues, recognizing that the human resources needs of  
9005 the Medical Center differ in certain respects from those of the Academic Division and the College.

9006 The Act extends and reinforces the human resources autonomy previously granted to the University.  
9007 This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and  
9008 have in place by or after the Effective Date of its initial Management Agreement with the  
9009 Commonwealth, a human resources system or systems for all University employees in the Academic  
9010 Division and the College, and to continue the existing human resources system for Medical Center  
9011 employees. On that Effective Date, and until changed by the University or unless otherwise specified in  
9012 this Policy, the systems for University employees shall be the same systems applicable to those  
9013 employees in effect immediately prior to that Effective Date.

### 9014 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

9015 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the  
9016 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
9017 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
9018 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
9019 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,  
9020 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
9021 implementation of those duties and responsibilities pursuant to the University's usual delegation policies  
9022 and procedures.



V. UNIVERSITY OF VIRGINIA HUMAN RESOURCES SYSTEMS.

A. Adoption and Implementation of Academic Division and College Human Resources Systems for the Academic Division and the College; Continuation of Medical Center Human Resources System for the Medical Center.

The President, acting through the Executive Vice President and Chief Operating Officer, in consultation with the Vice President and Provost, is hereby authorized to adopt and implement human resources systems for employees of the Academic Division and for employees of the College that 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](http://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.

9084 *The Academic Division and College Human Resources Systems adopted by the University pursuant to*  
 9085 *Governing Law and this Policy, as set forth in Section V above, as well as the Medical Center Human*  
 9086 *Resources System, shall embody the following human resources policies and principles:*

9087 *A. Election by Academic Division and College Salaried Nonfaculty Employees.*

9088 *Upon the adoption by the University of an Academic Division Human Resources System, or a*  
 9089 *College Human Resources System, or both, all salaried nonfaculty University employees who were in the*  
 9090 *employment of the Academic Division or the College, as appropriate, as of the day prior to the Effective*  
 9091 *Date of its initial Management Agreement with the Commonwealth, except employees of the Medical*  
 9092 *Center, shall be given written notice of their right to elect to participate in and be governed by either*  
 9093 *(i) the State human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900*  
 9094 *et seq.) of Title 2.2 of the Code of Virginia, and administered by the Department of Human Resource*  
 9095 *Management, or (ii) the Academic Division Human Resources System or the College Human Resources*  
 9096 *System, as appropriate. A salaried nonfaculty University employee who elects to continue to be*  
 9097 *governed by the State human resources program described above shall continue to be governed by all*  
 9098 *State human resources and benefit plans, programs, policies and procedures that apply to and govern*  
 9099 *State employees. A salaried nonfaculty University employee who elects in writing to participate in and*  
 9100 *be governed by the Academic Division Human Resources System or the College Human Resources*  
 9101 *System, as appropriate, also, by that election, shall be deemed to have elected to be eligible to*  
 9102 *participate in and to be governed by the human resources, authorized alternative insurance, and*  
 9103 *severance plans, programs, policies and procedures that are or may be adopted by the University as*  
 9104 *part of that Academic Division Human Resources System or College Human Resources System, as*  
 9105 *appropriate.*

9106 *Each such salaried nonfaculty University employee shall be given at least 90 days to make the*  
 9107 *election required by the prior paragraph. Such 90-day period shall begin to run on the date on which*  
 9108 *the Academic Division Human Resources System or the College Human Resources System, as*  
 9109 *appropriate, becomes effective for that University employee's classification of employees. If such a*  
 9110 *salaried nonfaculty University employee does not make an election by the end of that specified election*  
 9111 *period, that University employee shall be deemed not to have elected to participate in the Academic*  
 9112 *Division Human Resources System or the College Human Resources System, as appropriate. If such a*  
 9113 *salaried nonfaculty University employee elects to participate in the Academic Division Human Resources*  
 9114 *System or the College Human Resources System, as appropriate, that election shall be irrevocable. At*  
 9115 *least every two years, the University shall offer to salaried nonfaculty University employees who have*  
 9116 *elected to continue to participate in the state human resources program set forth in Chapters 28*  
 9117 *(§ 22.-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, an opportunity to*  
 9118 *elect to participate in the Academic Division Human Resources System or the College Human Resources*  
 9119 *System, as appropriate; provided that, each time prior to offering such opportunity to such salaried*  
 9120 *nonfaculty University employees, and at least once every two years after the effective date of the*  
 9121 *Academic Division Human Resources System or the College Human Resources System, or both, as*  
 9122 *appropriate, the University shall make available to each of its salaried nonfaculty University employees*  
 9123 *a comparison of its human resources program for that classification of salaried nonfaculty University*  
 9124 *employee with the State human resources program for comparable State employees, including but not*  
 9125 *limited to a comparability assessment of compensation and benefits. A copy of the human resources*  
 9126 *program comparison shall be provided to the Department of Human Resource Management.*

9127 *B. Classification and Compensation.*

9128 *General. The Systems shall include classification and compensation plans that are fair and*  
 9129 *reasonable, and are based on the availability of University financial resources. The plans adopted by*  
 9130 *the University for its faculty, Medical Center employees, and other Participating Covered Employees*  
 9131 *shall be independent of, and need not be based on, the classification and compensation plans of the*  
 9132 *Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the*  
 9133 *review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall*  
 9134 *provide information on its classification and compensation plans to all University employees. The plans*  
 9135 *applicable to Participating Covered Employees and Medical Center employees may or may not include*  
 9136 *changes in classification or compensation announced by the Commonwealth depending on such factors*  
 9137 *as the availability of necessary financial resources to fund any such changes, and subject to the review*  
 9138 *and approval by the Board of Visitors of any major changes in the University's compensation plans.*

9139 *Classification Plan. The Systems shall include one or more classification plans for University*  
 9140 *employees that classify positions according to job responsibilities and qualifications. On the Effective*  
 9141 *Date of the University's initial Management Agreement with the Commonwealth, and until changed by*  
 9142 *the University, the classification plans shall be the same plans that are in effect for each group of*  
 9143 *employees immediately prior to that Effective Date.*

9144 *Compensation Plan. The Systems shall include one or more compensation plans for each University*

employee classification or group. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the Academic Division and College shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the University, the compensation plan or plans for all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. On that Effective Date, and until changed by the University, the compensation plan for Medical Center employees in effect immediately prior to that Effective Date shall continue as the compensation plan for 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 § 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 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

9206 Covered Employees shall be the benefits plans provided to that group or classification as of the date  
 9207 immediately prior to that Effective Date. On or after that Effective Date, alternative University group  
 9208 life, accidental death and dismemberment, and short- and long-term disability plans may be provided to  
 9209 eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the  
 9210 execution of participation agreements as provided in subsections B and C of § 23-38.119 of the Act,  
 9211 they may be provided by the appropriate State programs, but no contributions to the State programs by  
 9212 the University shall be required for Participating Covered Employees who do not participate in the  
 9213 programs. Subject to the provisions of the Act, any new plans, programs and material changes  
 9214 permitted under current law in University employee benefits plans, other than Classified Employee  
 9215 benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash  
 9216 Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources,  
 9217 and the authority to implement cafeteria-style benefits for University employees other than Classified  
 9218 Employees.

9219 Insurance and all proceeds therefrom provided pursuant to § 23-38.119 of the Act shall be exempt  
 9220 from legal process and may be subject to assignment as provided in subsection A of § 23-38.119.

9221 D. Employee Relations.

9222 1. General. The Systems shall contain provisions that protect the rights and privileges of University  
 9223 employees consistent with sound management principles and fair employment practice law.

9224 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety  
 9225 compliance with applicable law and regulations.

9226 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to  
 9227 the performance of job duties, and free from intimidation or coercion in violation of State or federal  
 9228 law, including sexual harassment or other discrimination.

9229 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific  
 9230 to policies and procedures for awarding, honoring, or otherwise recognizing University employees,  
 9231 including but not limited to those who have performed particularly meritorious service for the  
 9232 University, have been employed by the University for specified periods of time, or have retired from the  
 9233 University after lengthy service.

9234 5. Counseling Services. The Systems shall provide counseling services through the State's Employee  
 9235 Assistance Program or a University Employee Assistance Program to any eligible University employee  
 9236 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the  
 9237 circumstances under which the time necessary to participate in such counseling may be granted.

9238 6. Unemployment Compensation. The Systems shall ensure that University employees receive the full  
 9239 unemployment compensation benefits to which they are legally entitled, and that the University's liability  
 9240 is limited to legitimate claims for such benefits.

9241 7. Workers' Compensation. The Systems shall ensure that University employees have workers'  
 9242 compensation benefits to which they are legally entitled pursuant to the State Employees' Workers'  
 9243 Compensation Program administered by the Department of Human Resource Management.

9244 8. Performance Planning and Evaluation. The Systems shall include one or more performance  
 9245 planning and evaluation processes for University employees that (i) establish and communicate the  
 9246 University's performance expectations, (ii) help develop productive working relationships, (iii) allow  
 9247 employees to present their views concerning their performance, (iv) identify areas for training or  
 9248 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify  
 9249 how superlative or inadequate performance shall be addressed, and (vii) ensure that all University  
 9250 employees are provided relevant information on the evaluation process. The Systems may include  
 9251 separate performance and evaluation processes for reasonably distinguishable groups of University  
 9252 employees. On the Effective Date of the University's initial Management Agreement with the  
 9253 Commonwealth, the existing merit-based performance management system for faculty and Medical  
 9254 Center employees shall continue, until amended by the University. On or after that Effective Date,  
 9255 Academic Division and College nonfaculty salaried Participating Covered Employees may be subject to  
 9256 a variable merit-based performance management system.

9257 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all  
 9258 employees and to ensure safe, efficient University operations and compliance with the law, the Systems  
 9259 shall establish rules of personal conduct and standards of acceptable work performance for University  
 9260 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for  
 9261 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or  
 9262 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more  
 9263 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action  
 9264 to employee conduct occurring only when employees are at work or are otherwise representing the  
 9265 University in an official or work-related capacity, unless otherwise specifically provided by the policies  
 9266 of the Systems or other applicable law. The Systems may provide for a probationary period for new

and re-employed University salaried nonfaculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of University employees.

10. *Grievance Procedure.* As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their 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 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License or the provision of patient care.

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

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

#### *E. Leave and Release Time.*

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

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

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

2. *Employment.* The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law.

In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation.

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

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

G. Information Systems.

The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the 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 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 (State Agency 207) and Medical Center (State 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.....

Executive Vice President and Chief Operating Officer

Department of Human Resources Management:

By: .....Date.....

Director, Department of Human Resources Management

## EXHIBIT R

### MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND

### THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

### THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

#### I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.

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

#### II. DEFINITIONS.

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

"Academic Division" means that part of the University known as (State Agency 207).

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

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

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

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

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

missions of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.

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

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

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

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

"University" means the University of Virginia, consisting of the Academic Division, the College, and 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 (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

9572 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems  
 9573 that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The  
 9574 University's financial reporting system shall provide (i) summary monthly reports for State agencies  
 9575 including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the  
 9576 Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the  
 9577 Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the  
 9578 Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a  
 9579 sufficient level of detail, on such schedule, and using such format that is compatible with the  
 9580 Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such  
 9581 other special reports as may be requested from time to time.

#### 9582 VI. FINANCIAL MANAGEMENT POLICIES.

9583 The President, acting through the Executive Vice President and Chief Operating Officer, shall create  
 9584 and implement any and all financial management policies necessary to establish a financial management  
 9585 system with adequate risk management and internal control processes and procedures for the effective  
 9586 protection and management of all University financial resources. Such policies will not address the  
 9587 underlying accounting principles and policies employed by the Commonwealth and the University, but  
 9588 rather will focus on the internal operations of the University's financial management. These policies  
 9589 shall include, but need not be limited to, the development of a tailored set of finance and accounting  
 9590 practices that seek to support the University's specific business and administrative operating  
 9591 environment in order to improve the efficiency and effectiveness of its business and administrative  
 9592 functions. In general, the system of independent financial management policies shall be guided by the  
 9593 general principles contained in the Commonwealth's Accounting Policies and Procedures such as  
 9594 establishing strong risk management and internal accounting controls to ensure University financial  
 9595 resources are properly safeguarded and that appropriate stewardship of public funds is obtained  
 9596 through management's oversight of the effective and efficient use of such funds in the performance of  
 9597 University programs.

9598 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University  
 9599 shall continue to follow the Commonwealth's accounting policies until such time as specific alternate  
 9600 policies can be developed, approved and implemented. Such alternate policies shall include applicable  
 9601 accountability measures and shall be submitted to the State Comptroller for review and comment before  
 9602 they are implemented by the University.

#### 9603 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

9604 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the  
 9605 University shall have the power and authority to manage all monies received by it. All State general  
 9606 funds to be allocated to the University shall remain subject to the appropriations process.

9607 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher  
 9608 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General  
 9609 Assembly the degree to which each public institution of higher education of the Commonwealth has met  
 9610 the financial and administrative management and educational-related performance benchmarks called  
 9611 for by that subsection and approved as part of the Appropriation Act then in effect for the State goals  
 9612 and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to  
 9613 § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full  
 9614 fiscal year for which the financial and administrative management and educational-related performance  
 9615 benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for  
 9616 all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has  
 9617 been certified during the fiscal year by SCHEV as having met such institutional performance  
 9618 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain  
 9619 financial incentives, including interest on the tuition and fees and other non-general fund Educational  
 9620 and General Revenues deposited into the State Treasury by the public institution of higher education.

9621 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for  
 9622 which it has received such certification from SCHEV, the University is authorized to hold and invest  
 9623 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary  
 9624 enterprise funds, and all other non-general fund revenues subject to the following requirements:

9625 i) The University shall deposit such funds in the State Treasury pursuant to the State process in  
 9626 place at the time of such deposit.

9627 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section  
 9628 IX below.

9629 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall  
 9630 hold in escrow all interest earned on the University's tuition and fees and other non-general fund  
 9631 Educational and General Revenues. Upon receipt of the required State Council of Higher Education for  
 9632 Virginia certification that the University has met such institutional performance benchmarks and the

conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

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

v) Beginning on the effective date of its initial Management Agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required 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.

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.

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

#### IX. DISBURSEMENT MANAGEMENT.

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

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;

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

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

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

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

State Comptroller for review and comment prior to their implementation by the University.

#### X. DEBT MANAGEMENT.

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

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

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.

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.

4. That the provisions of the first, second, and third enactments of this Act shall supersede the terms of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, that was entered into prior to January 1, 2006. Any such management agreement entered into prior to January 1, 2006, shall be deemed incorporated into this Act.

5. That the provisions of the first, second, and third enactments of this Act shall expire at

9816 midnight on June 30, 2010. The expiration of such enactments shall automatically result in the  
9817 expiration of the provisions of any management agreement between the Commonwealth and  
9818 Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia,  
9819 and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and  
9820 incorporated into this Act.