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SENATE BILL NO. 675

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations on March 6, 2006)

(Patrons Prior to Substitute—Senators Houck and Norment)

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

Be it enacted by the General Assembly of Virginia:

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

CHAPTER 1.

MANAGEMENT AGREEMENT

BY AND BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

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

RECITALS

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

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

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

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

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

AGREEMENT

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

ARTICLE 1. DEFINITIONS.

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

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

"Agreement" means "Management Agreement."

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

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

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

HOUSE SUBSTITUTE

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

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

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

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

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

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

## 73 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

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

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

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

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

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

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

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

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

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

138 *SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to*  
 139 *§ 23-38.110 of the Act and subject to the provisions of this Management Agreement, Virginia Tech may*  
 140 *be exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43*  
 141 *(§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate*  
 142 *from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the*  
 143 *Board of Visitors shall adopt and comply with procurement policies that are based upon competitive*  
 144 *principles and seek competition to the maximum practical degree. The Policy Governing the*  
 145 *Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials*  
 146 *and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the*  
 147 *"Procurement Rules") attached to that Policy as Attachment I constitute the policies and uniform*  
 148 *deviations from the VPPA required by subsections A and B of § 23-38.110 of the Act.*

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

162 *SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that*  
 163 *a Covered Institution include in its management agreement with the Commonwealth the quantification of*  
 164 *cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter*  
 165 *3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been*  
 166 *implemented by Virginia Tech, the parties agree that Virginia Tech is not in a position to quantify any*  
 167 *such cost savings at this time, although Virginia Tech expects that there will be cost savings resulting*  
 168 *from the additional authority granted to Virginia Tech pursuant to Subchapter 3 of the Act and that*  
 169 *such cost savings will be part of the determinations made during the reviews, assessments, and audits to*  
 170 *be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint*  
 171 *Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and*  
 172 *as otherwise described in Section 2.1.1 above.*

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

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

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

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

207 SECTION 2.2. *State Goals.*

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

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

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

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

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

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

245 ("SCHEV") by October 1, 2005, an institution-specific Six-Year Plan addressing Virginia Tech's  
 246 academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through  
 247 2011-12. Subsection A of § 23-9.2:3.02 requires Virginia Tech to update this Six-Year Plan by October  
 248 1 of each odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management  
 249 agreement address, among other issues, such matters as Virginia Tech's in-state undergraduate student  
 250 enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state  
 251 undergraduate students. These matters are addressed below and in Virginia Tech's Six-Year Plan  
 252 submitted to SCHEV, and the parties therefore agree that Virginia Tech's Six-Year Plan and the  
 253 description below meet the requirement of subsection B of § 23-38.97 of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

360 SECTION 3.2.1. Governor. Pursuant to subsection D 4 of § 23.38.88, and § 23-38.98, of the Act, if  
361 the Governor makes a written determination that Virginia Tech is not in substantial compliance with the  
362 terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor  
363 shall provide a copy of that written determination to the Rector of the Board of Visitors of Virginia  
364 Tech and to the members of the General Assembly, and (ii) Virginia Tech shall develop and implement  
365 a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial  
366 compliance with the terms of this Management Agreement and with the requirements of the Act, as soon  
367 as practicable, and shall provide a copy of such corrective action plan to the members of the General

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

376 SECTION 3.2.2. General Assembly. As provided in subsection D 4 of § 23-38.88 of the Act, the  
 377 General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to  
 378 § 23-38.98 of the Act, Virginia Tech's status as a Covered Institution governed by Subchapter 3 of the  
 379 Act may be revoked by an act of the General Assembly (i) if Virginia Tech fails to meet the  
 380 requirements of Subchapter 3 of the Act, or (ii) if Virginia Tech fails to meet the requirements of this  
 381 Management Agreement.

382 ARTICLE 4. GENERAL PROVISIONS.

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

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

390 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30,  
 391 2010.

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

396 EXHIBIT A

397  
 398 MANAGEMENT AGREEMENT  
 399 BETWEEN  
 400 THE COMMONWEALTH OF VIRGINIA  
 401 AND  
 402 VIRGINIA POLYTECHNIC INSTITUTE  
 403 AND STATE UNIVERSITY  
 404 PURSUANT TO  
 405 THE RESTRUCTURED HIGHER EDUCATION  
 406 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
 407 ACT OF 2005

409 POLICY GOVERNING  
 410 CAPITAL PROJECTS

412  
 413 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
 414 AND STATE UNIVERSITY  
 415 POLICY GOVERNING CAPITAL PROJECTS

416 I. PREAMBLE.

417 The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter  
 418 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the  
 419 University may be delegated the authority to establish its own system for undertaking the implementation  
 420 of its capital projects. In general, status as a Covered Institution is designed to replace the  
 421 post-authorization system of reviews, approvals, policies and procedures carried out by a variety of  
 422 central State agencies, and also the traditional preauthorization approval process for projects funded  
 423 entirely with non-general funds and without any proceeds from State Tax Supported Debt. The  
 424 University's system for carrying out its capital outlay process as a Covered Institution is to be governed  
 425 by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the  
 426 Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition  
 427 of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services,  
 428 Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted

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

#### 435 *II. DEFINITIONS.*

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

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

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

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

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

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

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

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

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

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

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

#### 466 *III. SCOPE OF POLICY.*

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

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

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

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

#### 486 *V. CAPITAL PROGRAM.*

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

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

#### 601 VI. AUTHORIZATION OF CAPITAL PROJECTS.

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

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

#### 621 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 622 SERVICES.

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

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

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

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

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

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

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

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

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

651 B. A prequalification procedure for contractors or products;

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

554 D. A prompt payment procedure.

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

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

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

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

#### 590 IX. ENVIRONMENTAL IMPACT REPORTS.

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

#### 598 X. BUILDING DEMOLITIONS.

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

#### 607 XI. BUILDING OR LAND ACQUISITIONS.

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

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

620 A. Environmental and Land Use Considerations.

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

628 B. Infrastructure and Site Condition.

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

639 C. Title and Survey.

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

648 D. Appraisal.

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

651 XII. BUILDING OR LAND DISPOSITIONS.

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

657 XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

671 XIV. REPORTING REQUIREMENTS.

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

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

685  
 686 EXHIBIT B

687  
 688 MANAGEMENT AGREEMENT  
 689 BETWEEN  
 690 THE COMMONWEALTH OF VIRGINIA  
 691 AND  
 692 VIRGINIA POLYTECHNIC INSTITUTE  
 693 AND STATE UNIVERSITY  
 694 PURSUANT TO  
 695 THE RESTRUCTURED HIGHER EDUCATION  
 696 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
 697 ACT OF 2005

698  
 699  
 700 POLICY GOVERNING LEASES OF REAL PROPERTY

701  
 702  
 703 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
 704 AND STATE UNIVERSITY  
 705 POLICY GOVERNING LEASES OF REAL PROPERTY

706 I. PREAMBLE.

707 In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases  
 708 of Property for certain leases entered into by the University, which was amended in 2003 as the Policy  
 709 Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The  
 710 Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10  
 711 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered  
 712 Institution, Virginia Polytechnic Institute and State University may have the authority to establish its  
 713 own system for the leasing of real property. The University's system for implementing this authority is to  
 714 be governed by policies adopted by the Board of Visitors. The following provisions of this Policy  
 715 constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the  
 716 University.

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

722 II. DEFINITIONS.

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

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

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

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

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

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

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

737 another entity.

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

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

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

744 III. SCOPE OF POLICY.

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

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

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

755 V. REQUIREMENTS FOR LEASES.

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

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

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

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

770 C. Approval of Form of Lease Required.

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

773 D. Execution of Leases.

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

782 E. Capital Leases.

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

786 F. Compliance with Applicable Law.

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

789 G. Certification of Occupancy.

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

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EXHIBIT C

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MANAGEMENT AGREEMENT

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BETWEEN

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THE COMMONWEALTH OF VIRGINIA

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798 AND  
799 VIRGINIA POLYTECHNIC INSTITUTE  
800 AND STATE UNIVERSITY  
801 PURSUANT TO  
802 THE RESTRUCTURED HIGHER EDUCATION  
803 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
804 ACT OF 2005  
805

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807 POLICY GOVERNING  
808 INFORMATION TECHNOLOGY  
809

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811 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
812 AND STATE UNIVERSITY  
813 POLICY GOVERNING INFORMATION TECHNOLOGY  
814

815 I. PREAMBLE.

816 *The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter*  
817 *4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions*  
818 *of higher education in the Commonwealth of Virginia that have entered into a Management Agreement*  
819 *with the Commonwealth "may be exempt from the provisions governing the Virginia Information*  
820 *Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the*  
821 *Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title*  
822 *2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such]*  
823 *institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the Code*  
824 *of Virginia. This Information Technology Policy shall become effective upon the effective date of a*  
825 *Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between the*  
826 *Commonwealth and the University that incorporates this Policy.*

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

829 II. DEFINITIONS.

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

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

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

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

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

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

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

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

846 III. SCOPE OF POLICY.

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

852 *This Policy shall govern the University's information technology strategic planning, expenditure*  
853 *reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and*  
854 *audits conducted within, by, or on behalf of the University. Upon the effective date of a Management*  
855 *Agreement between the Commonwealth and the University, as authorized by subsection D of § 23-38.88*  
856 *and § 23-38.111, therefore, the University shall be exempt from those provisions of the Code of Virginia,*  
857 *including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies*  
858 *Agency) and of Article 20 (§ 2.2- 2457 et seq.) (Information Technology Investment Board) of Chapter*  
859 *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,*

860 architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the  
 861 University; provided, however, that the University still shall be subject to those provisions of Chapter  
 862 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et  
 863 seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that  
 864 are applicable to public institutions of higher education of the Commonwealth and that do not govern  
 865 information technology strategic planning, expenditure reporting, budgeting, project management,  
 866 infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the  
 867 University.

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

#### 873 IV. GENERAL PROVISIONS.

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

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

##### 883 B. Strategic Planning.

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

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

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

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

904 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as  
 905 they currently exist and from time to time may be amended; and

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

##### 908 D. Project Management.

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

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

921 *revised from time to time.*

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

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

930 *The University shall be specifically exempt from:*

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

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

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

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

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

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

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

953 *F. Audits.*

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

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

964  
 965 **EXHIBIT D**

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 967 **MANAGEMENT AGREEMENT**

968 **BETWEEN**

969 **THE COMMONWEALTH OF VIRGINIA**

970 **AND**

971 **VIRGINIA POLYTECHNIC INSTITUTE**

972 **AND STATE UNIVERSITY**

973 **PURSUANT TO**

974 **THE RESTRUCTURED HIGHER EDUCATION**

975 **FINANCIAL AND ADMINISTRATIVE OPERATIONS**

976 **ACT OF 2005**

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 979 **POLICY GOVERNING**

980 **THE PROCUREMENT OF GOODS, SERVICES,**

981 **INSURANCE, AND CONSTRUCTION AND**

982 **THE DISPOSITION OF SURPLUS MATERIALS**

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

I. PREAMBLE.

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

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

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

II. DEFINITIONS.

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

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

"Agreement" means "Management Agreement".

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

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

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

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

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

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

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

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

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

III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

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

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

1047 *IV. GENERAL PROVISIONS.*

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

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

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

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

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

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

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

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

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

1083 *Consistent with this commitment, the University:*

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

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

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

1097 *E. Implementation.*

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

1106 requirements regarding disposition of surplus materials and distribution of proceeds from the sale or  
1107 recycling of surplus materials in §§ 2.2-1124 and 1125; the requirement to purchase from the  
1108 Department for the Blind and Vision Impaired ("VIB") (§ 2.2-1117); and any other state statutes, rules,  
1109 regulations or requirements relating to the procurement of goods, services, insurance, and construction,  
1110 including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the  
1111 duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department  
1112 of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review  
1113 and the oversight by the Division of Engineering and Buildings of the Virginia Department of General  
1114 Services of contracts for the construction of University capital projects and construction-related  
1115 professional services (§ 2.2-1132).

1116 V. UNIVERSITY PROCUREMENT POLICIES.

1117 A. General Competitive Principles.

1118 In connection with University procurements and the processes leading to award of contracts for  
1119 goods, services, insurance, and construction, the University is committed to:

- 1120 1. seeking competition to the maximum practical degree, taking into account the size of the
- 1121 anticipated procurement, the term of the resulting contract and the likely extent of competition;
- 1122 2. conducting all procurements in an open, fair and impartial manner and avoiding any impropriety
- 1123 or the appearance of any impropriety;
- 1124 3. making procurement rules clear in advance of any competition;
- 1125 4. providing access to the University 's business to all qualified vendors, firms and contractors, with
- 1126 no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to
- 1127 engage in cooperative procurements and to meet special needs of the University;
- 1128 5. ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular
- 1129 vendor; and
- 1130 6. providing for the free exchange of information between the University, vendors, firms or
- 1131 contractors concerning the goods or services sought and offered while preserving the confidentiality of
- 1132 proprietary information.

1133 B. Access to Records.

1134 Procurement records shall be available to citizens or to interested persons, firms or corporations in  
1135 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et  
1136 seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to  
1137 § 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia  
1138 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.

1139 C. Cooperative Procurements and Alliances.

1140 In circumstances where the University determines and documents that statewide contracts for goods  
1141 and services, including information technology and telecommunications goods and services, do not  
1142 provide goods and services to the University that meet its business goals and objectives, the University  
1143 is authorized to participate in cooperative procurements with other public or private organizations or  
1144 entities, including other educational institutions, public-private partnerships, public bodies, charitable  
1145 organizations, health care provider alliances and purchasing organizations, so long as the resulting  
1146 contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing  
1147 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1  
1148 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative  
1149 contract with a private organization or public-private partnership and the contract was not competitively  
1150 procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods,  
1151 Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by  
1152 other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above,  
1153 use of cooperative contracts shall conform to the business requirements of the Commonwealth's  
1154 electronic procurement system, including the requirement for payment of applicable fees. By October 1  
1155 of each year, the President, acting through the Executive Vice President and Chief Operating Officer,  
1156 shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit  
1157 and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and  
1158 alliances entered into or used during the prior fiscal year.

1159 D. Training; Ethics in Contracting.

1160 The President, acting through the Executive Vice President and Chief Operating Officer, shall take  
1161 all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged  
1162 in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of  
1163 the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement  
1164 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only  
1165 officials authorized by this Policy and any procedures adopted by the President, acting through the  
1166 Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and

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

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

1171 E. Ethics and University Procurements.

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

1178 VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

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

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

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

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

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

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

1209 A. Protests, Appeals and Debarment.

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

1219 B. Prompt Payment of Contractors and Subcontractors.

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

1227 C. Types of Procurements.

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

1229 competitive negotiation for professional services, as defined in the Rules, and shall implement  
1230 purchasing procedures developed to maximize competition given the size and duration of the contract,  
1231 and the needs of the University. Such policies and procedures may include special provisions for  
1232 procurements such as emergency procurements, sole source procurements, brand name procurements,  
1233 small purchases, procurements in which only one qualified vendor responds, and others.

1234 *D. Approval and Public Notice of Procurements*

1235 *The Rules and University implementing policies and procedures shall provide for approval of*  
1236 *solicitation documents by an authorized individual and for reasonable public notice of procurements,*  
1237 *given the size and nature of the need and the applicability of any Virginia Freedom of Information Act*  
1238 *exemption.*

1239 *E. Administration of Contracts.*

1240 *The Rules and University implementing policies and procedures shall contain provisions related to*  
1241 *the administration of contracts, including contract claims, modifications, extensions and assignments.*

1242 *F. Non-Discrimination.*

1243 *The Rules and University implementing policies and procedures shall provide for a*  
1244 *nondiscriminatory procurement process that prohibits discrimination because of race, religion, color, sex*  
1245 *or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include*  
1246 *appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned*  
1247 *and small businesses and to promote and encourage a diversity of suppliers.*

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ATTACHMENT I

1250

*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*

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

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*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:*

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*§ 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.*

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

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

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

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

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

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

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

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

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

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

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

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

1352 *the contract.*

1353 *b. Procurement of other than professional services. Selection shall be made of two or more offerors*  
 1354 *deemed to be fully qualified and best suited among those submitting proposals, on the basis of the*  
 1355 *factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.*  
 1356 *Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered,*  
 1357 *but need not be the sole determining factor. After negotiations have been conducted with each offeror so*  
 1358 *selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and*  
 1359 *shall award the contract to that offeror. When the terms and conditions of multiple awards are so*  
 1360 *provided in the Request for Proposal, awards may be made to more than one offeror. Should the*  
 1361 *Institution determine in writing and in its sole discretion that only one offeror has made the best*  
 1362 *proposal, a contract may be negotiated and awarded to that offeror.*

1363 *"Competitive sealed bidding" is a method of contractor selection, other than for professional*  
 1364 *services, which includes the following elements:*

1365 *1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications*  
 1366 *and contractual terms and conditions applicable to the procurement. Unless the Institution has provided*  
 1367 *for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite*  
 1368 *qualifications of potential contractors. When it is impractical to prepare initially a purchase description*  
 1369 *to support an award based on prices, an Invitation to Bid may be issued requesting the submission of*  
 1370 *unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been*  
 1371 *qualified under the criteria set forth in the first solicitation.*

1372 *2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by*  
 1373 *publication on the Department of General Services' central electronic procurement website. Public*  
 1374 *notice also may be published in a newspaper of general circulation or on other appropriate websites, or*  
 1375 *both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations*  
 1376 *shall include businesses selected from a list made available by the Department of Minority Business*  
 1377 *Enterprise.*

1378 *3. Public opening and announcement of all bids received.*

1379 *4. Evaluation of bids based upon the requirements set forth in the invitation, which may include*  
 1380 *special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria*  
 1381 *such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose,*  
 1382 *which are helpful in determining acceptability.*

1383 *5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple*  
 1384 *awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

1385 *"Construction" means building, altering, repairing, improving or demolishing any structure, building*  
 1386 *or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

1387 *"Construction management contract" means a contract in which a party is retained by the owner to*  
 1388 *coordinate and administer contracts for construction services for the benefit of the owner, and may also*  
 1389 *include, if provided in the contract, the furnishing of construction services to the owner.*

1390 *"Covered Institution" or "Institution" means, on and after the effective date of the initial management*  
 1391 *agreement with the Commonwealth of Virginia, a public institution of higher education of the*  
 1392 *Commonwealth that has entered into a management agreement with the Commonwealth to be governed*  
 1393 *by the provisions of Subchapter 3 of the Restructuring Act. "Design-build contract" means a contract*  
 1394 *between the Institution and another party in which the party contracting with the Institution agrees to*  
 1395 *both design and build the structure, roadway or other item specified in the contract.*

1396 *"Goods" means all material, equipment, supplies, and printing, including information technology and*  
 1397 *telecommunications goods such as automated data processing hardware and software. "Informality"*  
 1398 *means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to*  
 1399 *Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule*  
 1400 *for the goods, services or construction being procured. "Multiphase professional services contract"*  
 1401 *means a contract for the providing of professional services where the total scope of work of the second*  
 1402 *or subsequent phase of the contract cannot be specified without the results of the first or prior phase of*  
 1403 *the contract.*

1404 *"Nonprofessional services" means any services not specifically identified as professional services in*  
 1405 *the definition of professional services and includes small construction projects valued not over*  
 1406 *\$1,000,000; provided that subdivision 3a of the definition of "competitive negotiation" in this section*  
 1407 *shall still apply to professional services for such small construction projects.*

1408 *"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who,*  
 1409 *at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the*  
 1410 *sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured*  
 1411 *under the contract, and who at such time is eligible and qualified in all respects to perform that*  
 1412 *contract, and who would have been eligible and qualified to submit a bid or proposal had the contract*

- 1413 *been procured through competitive sealed bidding or competitive negotiation.*
- 1414 *"Professional services" means work performed by an independent contractor within the scope of the*
- 1415 *practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,*
- 1416 *dentistry, medicine, optometry, pharmacy or professional engineering.*
- 1417 *"Public body" means any legislative, executive or judicial body, agency, office, department, authority,*
- 1418 *post, commission, committee, institution, board or political subdivision created by law to exercise some*
- 1419 *sovereign power or to perform some governmental duty, and empowered by law to undertake the*
- 1420 *activities described in these Rules.*
- 1421 *"Public contract" means an agreement between the Institution and a nongovernmental source that is*
- 1422 *enforceable in a court of law.*
- 1423 *"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform*
- 1424 *fully the contract requirements and the moral and business integrity and reliability that will assure good*
- 1425 *faith performance, and who has been prequalified, if required.*
- 1426 *"Responsive bidder" means a person who has submitted a bid that conforms in all material respects*
- 1427 *to the Invitation to Bid.*
- 1428 *"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative*
- 1429 *Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*
- 1430 *"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction*
- 1431 *adopted by the governing body of the Covered Institution.*
- 1432 *"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified*
- 1433 *goods or nonprofessional services through real-time electronic bidding, with the award being made to*
- 1434 *the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed*
- 1435 *and bidders shall have the opportunity to modify their bid prices for the duration of the time period*
- 1436 *established for bid opening.*
- 1437 *"Services" means any work performed by an independent contractor wherein the service rendered*
- 1438 *does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials*
- 1439 *and supplies.*
- 1440 *"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working*
- 1441 *environment and individual goals that utilizes work experience and related services for assisting the*
- 1442 *handicapped person to progress toward normal living and a productive vocational status.*
- 1443 *§ 5. Methods of procurement. -*
- 1444 *A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for*
- 1445 *the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,*
- 1446 *or competitive negotiation as provided in this section, unless otherwise authorized by law.*
- 1447 *B. Professional services shall be procured by competitive negotiation. Qualification-based selection*
- 1448 *shall be used for design services.*
- 1449 *C. Goods, services, or insurance may be procured by competitive negotiation.*
- 1450 *D. Construction may be procured only by competitive sealed bidding, except that competitive*
- 1451 *negotiation may be used in the following instances upon a determination made in advance by the*
- 1452 *Institution and set forth in writing that competitive sealed bidding is either not practicable or not*
- 1453 *fiscally advantageous to the public, which writing shall document the basis for this determination:*
- 1454 *1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*
- 1455 *2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;*
- 1456 *3. By the Institution for the construction of highways and any draining, dredging, excavation,*
- 1457 *grading or similar work upon real property; or*
- 1458 *E. Upon a determination in writing that there is only one source practicably available for that which*
- 1459 *is to be procured, a contract may be negotiated and awarded to that source without competitive sealed*
- 1460 *bidding or competitive negotiation. The writing shall document the basis for this determination. The*
- 1461 *Institution shall issue a written notice stating that only one source was determined to be practicably*
- 1462 *available, and identifying that which is being procured, the contractor selected, and the date on which*
- 1463 *the contract was or will be awarded. This notice shall be posted in a designated public area, which may*
- 1464 *be the Department of General Services' website for the Commonwealth's central electronic procurement*
- 1465 *system, or published in a newspaper of general circulation on the day the Institution awards or*
- 1466 *announces its decision to award the contract, whichever occurs first. Public notice shall also be*
- 1467 *published on the Department of General Services' website for the Commonwealth's central electronic*
- 1468 *procurement system and may be published on other appropriate websites.*
- 1469 *F. In case of emergency, a contract may be awarded without competitive sealed bidding or*
- 1470 *competitive negotiation; however, such procurement shall be made with such competition as is*
- 1471 *practicable under the circumstances. A written determination of the basis for the emergency and for the*
- 1472 *selection of the particular contractor shall be included in the contract file. The Institution shall issue a*
- 1473 *written notice stating that the contract is being awarded on an emergency basis, and identifying that*
- 1474 *which is being procured, the contractor selected, and the date on which the contract was or will be*

1475 awarded. This notice shall be posted in a designated public area, which may be the Department of  
 1476 General Services' website for the Commonwealth's central electronic procurement system, or published  
 1477 in a newspaper of general circulation on the day the Institution awards or announces its decision to  
 1478 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may  
 1479 also be published on the Department of General Services' website for the Commonwealth's central  
 1480 electronic procurement system and other appropriate websites.

1481 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive  
 1482 sealed bids or competitive negotiation for single or term contracts for goods and services other than  
 1483 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;  
 1484 however, such small purchase procedures shall provide for competition wherever practicable.

1485 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive  
 1486 negotiation for single or term contracts for professional services if the aggregate or the sum of all  
 1487 phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for  
 1488 competition wherever practicable.

1489 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase  
 1490 of goods, products or commodities from a public auction sale is in the best interests of the public, such  
 1491 items may be purchased at the auction, including online public auctions. The writing shall document the  
 1492 basis for this determination.

1493 J. The purchase of goods or nonprofessional services, but not construction or professional services,  
 1494 may be made by reverse auctioning.

1495 § 6. Cooperative procurement. -

1496 A. In circumstances where the Institution determines and documents that statewide contracts for  
 1497 goods and services, including information technology and telecommunications goods and services, do  
 1498 not provide goods and services to the Institution that meet its business goals and objectives, the  
 1499 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement  
 1500 arrangement on behalf of or in conjunction with public bodies, public or private health or educational  
 1501 institutions, other public or private organizations or entities, including public-private partnerships,  
 1502 charitable organizations, health care provider alliances or purchasing organizations or entities, or with  
 1503 public agencies or institutions or group purchasing organizations of the several states, territories of the  
 1504 United States, or the District of Columbia, for the purpose of combining requirements to effect cost  
 1505 savings or reduce administrative expense in any acquisition of goods and services, other than  
 1506 professional services. The Institution may purchase from any authority, department, agency, institution,  
 1507 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not  
 1508 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to  
 1509 bid specified that the procurement was being conducted on behalf of other public bodies. In such  
 1510 instances, deviation from the procurement procedures set forth in these Rules and the administrative  
 1511 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of  
 1512 the above, use of cooperative contracts shall conform to the business requirements of the  
 1513 Commonwealth's electronic procurement system, including the requirement for payment of applicable  
 1514 fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that  
 1515 will allow for participation in any such arrangement.

1516 B. In circumstances where statewide contracts for goods and services, including information  
 1517 technology and telecommunications goods and services, do not provide goods and services to meet the  
 1518 Institution's business goals and objectives, and as authorized by the United States Congress and  
 1519 consistent with applicable federal regulations, and provided the terms of the contract permit such  
 1520 purchases:

1521 1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services  
 1522 Administration contract or a contract awarded by any other agency of the U.S. government; and

1523 2. The Institution may purchase telecommunications and information technology goods and  
 1524 nonprofessional services from a U.S. General Services Administration contract or a contract awarded by  
 1525 any other agency of the U.S. government.

1526 § 7. Design-build or construction management contracts authorized. -

1527 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed  
 1528 price design-build basis or construction management basis in accordance with the provisions of this  
 1529 section.

1530 B. Procurement of construction by the design-build or construction management method shall be a  
 1531 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their  
 1532 qualifications. Based upon the information submitted and any other relevant information which the  
 1533 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be  
 1534 selected by the Commonwealth and requested to submit proposals.

1535 § 8. Modification of the contract. -

1536 A. A contract awarded by the Institution may include provisions for modification of the contract  
1537 during performance, but no fixed-price contract may be increased by more than twenty-five percent of  
1538 the amount of the contract or \$50,000, whichever is greater, without the advance written approval of  
1539 the Institution's president or his designee. In no event may the amount of any contract, without adequate  
1540 consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the  
1541 consequences of an error in its bid or offer.

1542 B. The Institution may extend the term of an existing contract for services to allow completion of any  
1543 work undertaken but not completed during the original term of the contract.

1544 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract  
1545 modifications.

1546 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

1547 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
1548 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis  
1549 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the  
1550 Institution shall include businesses selected from a list made available by the Department of Minority  
1551 Business Enterprise.

1552 B. The Institution shall establish programs consistent with this section to facilitate the participation  
1553 of small businesses and businesses owned by women and minorities in procurement transactions. The  
1554 programs established shall be in writing and shall include cooperation with the Department of Minority  
1555 Business Enterprise, the United States Small Business Administration, and other public or private  
1556 agencies. The Institution shall submit annual progress reports on minority business procurement to the  
1557 Department of Minority Business Enterprise.

1558 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
1559 analysis that documents a statistically significant disparity between the availability and utilization of  
1560 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require  
1561 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing  
1562 law.

1563 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
1564 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination  
1565 that employing ex-offenders on the specific contract is not in its best interest.

1566 § 10. Employment discrimination by contractor prohibited; required contract provisions. - The  
1567 Institution shall include in every contract of more than \$10,000 the following provisions:

1568 1. During the performance of this contract, the contractor agrees as follows:

1569 a. The contractor will not discriminate against any employee or applicant for employment because of  
1570 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating  
1571 to discrimination in employment, except where there is a bona fide occupational qualification reasonably  
1572 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous  
1573 places, available to employees and applicants for employment, notices setting forth the provisions of this  
1574 nondiscrimination clause.

1575 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the  
1576 contractor, will state that such contractor is an equal opportunity employer.

1577 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation  
1578 shall be deemed sufficient for the purpose of meeting the requirements of this section.

1579 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every  
1580 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
1581 subcontractor or vendor.

1582 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. -

1583 The Institution shall include in every contract over \$10,000 the following provisions: During the  
1584 performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the  
1585 contractor's employees; (ii) post in conspicuous places, available to employees and applicants for  
1586 employment, a statement notifying employees that the unlawful manufacture, sale, distribution,  
1587 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's  
1588 workplace and specifying the actions that will be taken against employees for violations of such  
1589 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the  
1590 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the  
1591 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be  
1592 binding upon each subcontractor or vendor.

1593 For the purposes of this section, "drug-free workplace" means a site for the "performance of work  
1594 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the  
1595 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,  
1596 dispensation, possession or use of any controlled substance or marijuana during the performance of the  
1597 contract.

1598 § 12. *Use of brand names.* - Unless otherwise provided in the Invitation to Bid, the name of a  
 1599 certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or  
 1600 manufacturer named and shall be deemed to convey the general style, type, character, and quality of the  
 1601 article desired. Any article that the Institution in its sole discretion determines to be the equal of that  
 1602 specified, considering quality, workmanship, economy of operation, and suitability for the purpose  
 1603 intended, shall be accepted.

1604 § 13. *Comments concerning specifications.* - The Institution shall establish procedures whereby  
 1605 comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal  
 1606 can be received and considered prior to the time set for receipt of bids or proposals or award of the  
 1607 contract.

1608 § 14. *Prequalification generally; prequalification for construction.* -

1609 A. *Prospective contractors may be prequalified for particular types of supplies, services, insurance or*  
 1610 *construction, and consideration of bids or proposals limited to prequalified contractors. Any*  
 1611 *prequalification procedure shall be established in writing and sufficiently in advance of its*  
 1612 *implementation to allow potential contractors a fair opportunity to complete the process.*

1613 B. *Any prequalification of prospective contractors for construction by the Institution shall be*  
 1614 *pursuant to a prequalification process for construction projects adopted by the Institution. The process*  
 1615 *shall be consistent with the provisions of this section.*

1616 *The application form used in such process shall set forth the criteria upon which the qualifications*  
 1617 *of prospective contractors will be evaluated. The application form shall request of prospective*  
 1618 *contractors only such information as is appropriate for an objective evaluation of all prospective*  
 1619 *contractors pursuant to such criteria. The form shall allow the prospective contractor seeking*  
 1620 *prequalification to request, by checking the appropriate box, that all information voluntarily submitted*  
 1621 *by the contractor pursuant to this subsection shall be considered a trade secret or proprietary*  
 1622 *information subject to the provisions of subsection D of § 34 of these Rules.*

1623 *In all instances in which the Institution requires prequalification of potential contractors for*  
 1624 *construction projects, advance notice shall be given of the deadline for the submission of*  
 1625 *prequalification applications. The deadline for submission shall be sufficiently in advance of the date set*  
 1626 *for the submission of bids for such construction so as to allow the procedures set forth in this*  
 1627 *subsection to be accomplished.*

1628 *At least thirty days prior to the date established for submission of bids or proposals under the*  
 1629 *procurement of the contract for which the prequalification applies, the Institution shall advise in writing*  
 1630 *each contractor who submitted an application whether that contractor has been prequalified. In the*  
 1631 *event that a contractor is denied prequalification, the written notification to the contractor shall state*  
 1632 *the reasons for the denial of prequalification and the factual basis of such reasons.*

1633 *A decision by the Institution denying prequalification under the provisions of this subsection shall be*  
 1634 *final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

1635 C. *The Institution may deny prequalification to any contractor only if the Institution finds one of the*  
 1636 *following:*

1637 1. *The contractor does not have sufficient financial ability to perform the contract that would result*  
 1638 *from such procurement. If a bond is required to ensure performance of a contract, evidence that the*  
 1639 *contractor can acquire a surety bond from a corporation included on the United States Treasury list of*  
 1640 *acceptable surety corporations in the amount and type required by the Institution shall be sufficient to*  
 1641 *establish the financial ability of the contractor to perform the contract resulting from such procurement;*

1642 2. *The contractor does not have appropriate experience to perform the construction project in*  
 1643 *question;*

1644 3. *The contractor or any officer, director or owner thereof has had judgments entered against him*  
 1645 *within the past ten years for the breach of contracts for governmental or nongovernmental construction,*  
 1646 *including, but not limited to, design-build or construction management;*

1647 4. *The contractor has been in substantial noncompliance with the terms and conditions of prior*  
 1648 *construction contracts with the Institution without good cause. If the Institution has not contracted with*  
 1649 *a contractor in any prior construction contracts, the Institution may deny prequalification if the*  
 1650 *contractor has been in substantial noncompliance with the terms and conditions of comparable*  
 1651 *construction contracts with another public body without good cause.*

1652 *The Institution may not utilize this provision to deny prequalification unless the facts underlying such*  
 1653 *substantial noncompliance were documented in writing in the prior construction project file and such*  
 1654 *information relating thereto given to the contractor at that time, with the opportunity to respond;*

1655 5. *The contractor or any officer, director, owner, project manager, procurement manager or chief*  
 1656 *financial official thereof has been convicted within the past ten years of a crime related to governmental*  
 1657 *or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6*  
 1658 *(§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1721 *the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an*  
 1722 *unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material*  
 1723 *made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission*  
 1724 *can be clearly shown by objective evidence drawn from inspection of original work papers, documents*  
 1725 *and materials used in the preparation of the bid sought to be withdrawn.*

1726 *If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from*  
 1727 *consideration if the price bid would have been substantially lower than the other bids due solely to the*  
 1728 *clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of*  
 1729 *work, labor or material made directly in the compilation of a bid that shall be clearly shown by*  
 1730 *objective evidence drawn from inspection of original work papers, documents and materials used in the*  
 1731 *preparation of the bid sought to be withdrawn.*

1732 *One of the following procedures for withdrawal of a bid shall be selected by the Institution and*  
 1733 *stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to*  
 1734 *withdraw his bid within two business days after the conclusion of the bid opening procedure and shall*  
 1735 *submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or*  
 1736 *designated official his original work papers, documents and materials used in the preparation of the bid*  
 1737 *within one day after the date fixed for submission of bids. The work papers shall be delivered by the*  
 1738 *bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either*  
 1739 *instance, the work papers, documents and materials may be considered as trade secrets or proprietary*  
 1740 *information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened*  
 1741 *one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder*  
 1742 *shall have two hours after the opening of bids within which to claim in writing any mistake as defined*  
 1743 *herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour*  
 1744 *period has elapsed. The mistake shall be proved only from the original work papers, documents and*  
 1745 *materials delivered as required herein.*

1746 *B. The Institution may establish procedures for the withdrawal of bids for other than construction*  
 1747 *contracts.*

1748 *C. No bid shall be withdrawn under this section when the result would be the awarding of the*  
 1749 *contract on another bid of the same bidder or of another bidder in which the ownership of the*  
 1750 *withdrawing bidder is more than five percent.*

1751 *D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed*  
 1752 *to be the low bid.*

1753 *E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or*  
 1754 *labor to or perform any subcontract or other work agreement for the person or firm to whom the*  
 1755 *contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for*  
 1756 *which the withdrawn bid was submitted.*

1757 *F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify*  
 1758 *the bidder in writing stating the reasons for its decision and award the contract to such bidder at the*  
 1759 *bid price, provided such bidder is a responsible and responsive bidder.*

1760 *§ 24. Contract Pricing Arrangements. -*

1761 *A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other*  
 1762 *basis that is not prohibited by these Rules.*

1763 *B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall*  
 1764 *be awarded on the basis of cost plus a percentage of cost.*

1765 *C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis*  
 1766 *of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in*  
 1767 *whole or part as a percentage of such claims, shall not be prohibited by this section.*

1768 *§ 25. Workers' compensation requirements for construction contractors and subcontractors. -*

1769 *A. No contractor shall perform any work on a construction project of the Institution unless he (i) has*  
 1770 *obtained, and continues to maintain for the duration of the work, workers' compensation coverage*  
 1771 *required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides*  
 1772 *prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

1773 *B. The Department of General Services shall provide the form to the Institution. Failure of the*  
 1774 *Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)*  
 1775 *of subsection A.*

1776 *C. No subcontractor shall perform any work on a construction project of the Institution unless he*  
 1777 *has obtained, and continues to maintain for the duration of such work, workers' compensation coverage*  
 1778 *required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.*

1779 *§ 26. Retainage on construction contracts. -*

1780 *A. In any contract issued by the Institution for construction that provides for progress payments in*  
 1781 *installments based upon an estimated percentage of completion, the contractor shall be paid at least*

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

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

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

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

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

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

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

1799 3. Provides for liquidated damages for delay; or

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

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

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

1813 § 28. Bid bonds. -

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

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

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

1823 § 29. Performance and payment bonds. -

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

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

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

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

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

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

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

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

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

1851 § 30. Alternative forms of security. -

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

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

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

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

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

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

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

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

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

1889 § 34. Public inspection of certain records. -

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

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

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

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

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

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

1913 § 35. Exemption for certain transactions. -

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

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

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

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

1925 4. The University of Virginia Medical Center.

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

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

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

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

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

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

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

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

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

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

1967 a particular religion.

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

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

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

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

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

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

1990 c. Private educational institutions; or

1991 d. Other public educational institutions.

1992 2. Speakers and performing artists;

1993 3. Memberships and Association dues;

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

1996 5. Group travel in foreign countries;

1997 6. Conference facilities and services;

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

2000 8. Royalties; or

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

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

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

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

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

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

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

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

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

2028 of § 26 relating to retainage shall remain valid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2070 § 46. Interest penalty; exceptions. -

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

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

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

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

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

2090 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the  
 2091 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the  
 2092 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is  
 2093 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue  
 2094 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven  
 2095 days following the payment date.

2096 § 47. Ineligibility. -

2097 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from  
 2098 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the  
 2099 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the  
 2100 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,  
 2101 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so  
 2102 requested by the bidder within five business days after receipt of the notice.

2103 Within ten business days after receipt of the notice, the bidder may submit rebuttal information  
 2104 challenging the evaluation. The Institution shall issue its written determination of disqualification or  
 2105 ineligibility based on all information in the possession of the Institution, including any rebuttal  
 2106 information, within five business days of the date the Institution received such rebuttal information.

2107 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to  
 2108 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the  
 2109 evaluation reveals that the bidder should be refused permission to participate, or disqualified from  
 2110 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The  
 2111 notice shall state the basis for the determination, which shall be final unless the bidder appeals the  
 2112 decision within ten days after receipt of the notice by invoking administrative procedures meeting the  
 2113 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided  
 2114 in § 54.

2115 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in  
 2116 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be  
 2117 restoration of eligibility.

2118 § 48. Appeal of denial of withdrawal of bid. -

2119 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final  
 2120 and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by  
 2121 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by  
 2122 instituting legal action as provided in § 54.

2123 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,  
 2124 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the  
 2125 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released  
 2126 only upon a final determination that the bidder was entitled to withdraw the bid.

2127 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an  
 2128 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the  
 2129 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation  
 2130 to Bid, the sole relief shall be withdrawal of the bid.

2131 § 49. Determination of nonresponsibility. -

2132 A. Following public opening and announcement of bids received on an Invitation to Bid, the  
 2133 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed  
 2134 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent  
 2135 low bidder is responsible. If the Institution so determines, then it may proceed with an award in  
 2136 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution  
 2137 determines that the apparent low bidder is not responsible, it shall proceed as follows:

2138 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify  
 2139 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for  
 2140 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that  
 2141 relate to the determination, if so requested by the bidder within five business days after receipt of the  
 2142 notice.

2143 2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information  
 2144 challenging the evaluation. The Institution shall issue its written determination of responsibility based on  
 2145 all information in the possession of the Institution, including any rebuttal information, within five  
 2146 business days of the date the Institution received the rebuttal information. At the same time, the  
 2147 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

2148 3. Such notice shall state the basis for the determination, which shall be final unless the bidder  
 2149 appeals the decision within ten days after receipt of the notice by invoking administrative procedures  
 2150 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action

2151 as provided in § 54.

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

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

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

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

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

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

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

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

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

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

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

2213 of a timely legal action as provided in § 54, no further action to award the contract shall be taken  
 2214 unless there is a written determination that proceeding without delay is necessary to protect the public  
 2215 interest or unless the bid or offer would expire.

2216 § 53. Contractual disputes. -

2217 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than  
 2218 sixty days after final payment. However, written notice of the contractor's intention to file a claim shall  
 2219 be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing  
 2220 herein shall preclude a contract from requiring submission of an invoice for final payment within a  
 2221 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of  
 2222 claims shall not delay payment of amounts agreed due in the final payment.

2223 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.  
 2224 Such procedure, which may be contained in the contract or may be specifically incorporated into the  
 2225 contract by reference and made available to the contractor, shall establish a time limit for a final  
 2226 decision in writing by the Institution. If the Institution has established administrative procedures meeting  
 2227 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically  
 2228 incorporated in the contract by reference and made available to the contractor. The Institution may  
 2229 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution  
 2230 ("ADR") as an administrative procedure.

2231 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these  
 2232 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's  
 2233 decision on the claim, unless the Institution fails to render such decision within the time specified in the  
 2234 contract.

2235 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within  
 2236 six months of the date of the final decision on the claim by the Institution by invoking administrative  
 2237 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting  
 2238 legal action as provided in § 54.

2239 § 54. Legal actions. -

2240 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from  
 2241 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder  
 2242 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging  
 2243 that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an  
 2244 honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the  
 2245 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation  
 2246 to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of  
 2247 prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder,  
 2248 having been previously determined by the Institution to be not responsible in accordance with § 4, is  
 2249 found by the court to be a responsible bidder, the court may direct the Institution to award the contract  
 2250 to such bidder in accordance with the requirements of this section and the Invitation to Bid.

2251 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the  
 2252 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes  
 2253 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary  
 2254 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,  
 2255 or the terms or conditions of the Invitation to Bid.

2256 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a  
 2257 sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award  
 2258 or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit  
 2259 court challenging a proposed award or the award of a contract, which shall be reversed only if the  
 2260 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,  
 2261 but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable  
 2262 state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

2263 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting  
 2264 of reasonable security to protect the Institution.

2265 E. A contractor may bring an action involving a contract dispute with the Institution in the  
 2266 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be  
 2267 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of  
 2268 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of  
 2269 Accounts.

2270 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of  
 2271 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or  
 2272 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same  
 2273 procurement transaction unless the Institution agrees otherwise.

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

2276 § 55. Administrative appeals procedure. -

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

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

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

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

2300

2301

## ATTACHMENT 2

2302

### Memorandum of Agreement

2303

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

2304

ERP/SciQuest Implementation with eVA

2305

The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute

2306

and State University (University) agree to the following:

2307

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

2309

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

2314

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

2320

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

2323

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

2326

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

2330

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

2336 A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the  
 2337 appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that  
 2338 includes the statement "Vendor refuses eVA terms and conditions". The University agrees that it will pay  
 2339 the eVA transaction fees for these orders.

2340 B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the  
 2341 appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that  
 2342 includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager,  
 2343 e-mail address and phone number." The University agrees that, for these orders, it will resolve any  
 2344 vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether  
 2345 such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or  
 2346 CGI-AMS.

2347 The University further agrees that:

2348 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the  
 2349 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed  
 2350 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

2351 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)  
 2352 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

2353 3. In the event the University does not provide resolution notification to the eVA Business Manager  
 2354 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment  
 2355 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

2356 VII. The University will not require separate vendor registrations as a prerequisite for responding to  
 2357 University solicitations. The University will participate in an enterprise workgroup to determine the best  
 2358 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9  
 2359 information will be supported in eVA in such a way as to provide CoVA verified vendor information to  
 2360 entities. The University will have the option to receive a subset of vendor related data. Until an  
 2361 enterprise W-9 process is established, the University will be responsible for collection of W-9  
 2362 information.

2363 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at  
 2364 least six (6) months prior to change or as soon as any new plan is proposed) with the University  
 2365 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that  
 2366 may affect the technical changes described herein.

2367 IX. Integration of the University's electronic procurement solution with the University's ERP is the  
 2368 responsibility of the University. The solution must provide for orders, change orders and cancellations.

2369 Guidelines

2370 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for  
 2371 electronic procurement between the University and the CoVA..

2372 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of  
 2373 8PM and 4AM. eVA will transmit registered vendor orders it receives within fifteen minutes or less.

2374 3. Non-exempt orders to un-registered vendors are to be transmitted to eVA for loading to the Data  
 2375 Warehouse. The University shall be responsible for payment of all eVA transaction fees for non-exempt  
 2376 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and  
 2377 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements  
 2378 for unregistered vendor orders.

2379 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA  
 2380 standard format.

2381 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

2382 6. eVA Interface standard does not currently support PCard orders; however these orders may be  
 2383 processed via the interface as (a) confirming orders or (b) orders for pcards on file with the vendor.

2384 Schedule

2385 The University shall implement this agreement no later than July 2006.

2386 Metrics

2387 A. The University shall comply with the following Governor's eVA Management Objective

2388 95% of all non-exempt orders to be processed by eVA. Includes non-exempt orders issued by end  
 2389 users (PCard & LPO) and the central purchasing office. Nonexempt orders to unregistered vendors  
 2390 received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood  
 2391 that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory  
 2392 processing through eVA. All non-exempt orders not processed by eVA shall be reported on the eVA  
 2393 Dashboard and the corresponding non-use fee paid by the University.

2394 B. The University shall meet the following management objectives for electronic procurement:

2395 1. Provide end users, including purchase-card users, access to an electronic system for buying;

2396 2. Conduct business with eVA registered vendors whenever possible;

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

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

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

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

2411 The University further agrees that:

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

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

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

2420 6. Timely process electronic change orders and cancellations;

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

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

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

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

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

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

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

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

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2436

#### EXHIBIT E

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#### MANAGEMENT AGREEMENT

2439

#### BETWEEN

2440

THE COMMONWEALTH OF VIRGINIA

2441

AND

2442

VIRGINIA POLYTECHNIC INSTITUTE

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AND STATE UNIVERSITY

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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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HUMAN RESOURCES FOR

2452

PARTICIPATING COVERED EMPLOYEES

2453

AND OTHER UNIVERSITY EMPLOYEES

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THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE

2457

AND STATE UNIVERSITY

2458

POLICY GOVERNING HUMAN RESOURCES FOR

**PARTICIPATING COVERED EMPLOYEES  
AND OTHER UNIVERSITY EMPLOYEES**

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**I. PREAMBLE.**

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

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

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

**II. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2525 "University employee" means a Covered Employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

2582 *http://www.hr.vt.edu/, as periodically amended; and*

2583 *4. the Human Resource System for wage employees as set forth in the current Virginia Tech policies,*  
 2584 *procedures, and guidelines, as posted on the University's website, <http://www.policies.vt.edu/>, and*  
 2585 *Human Resource' website, <http://www.hr.vt.edu/>, as periodically amended, and for graduate students*  
 2586 *employed on assistantships as set forth in the Virginia Tech Graduate School policies, as posted on the*  
 2587 *Graduate School website, <http://www.grads.vt.edu/>, as periodically amended.*

2588 *All the systems described above, except the system described in paragraph 2, may be amended by the*  
 2589 *President, acting through the Executive Vice President and Chief Operating Officer, consistent with*  
 2590 *these human resources policies. The system described in paragraph 2 may be amended only by the*  
 2591 *State.*

2592 *B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human*  
 2593 *Resources Policies.*

2594 *The President, acting through the Executive Vice President and Chief Operating Officer, shall take*  
 2595 *all necessary and reasonable steps to assure (i) that the University officials who develop, implement and*  
 2596 *administer the University Human Resources Systems authorized by Governing Law and these human*  
 2597 *resources policies are knowledgeable regarding the requirements of the Governing Law, other*  
 2598 *applicable provisions of law, these University human resources policies, and other applicable Board of*  
 2599 *Visitors' human resources policies affecting University employees, and (ii) that compliance with such*  
 2600 *laws and human resources policies is achieved.*

2601 **VI. HUMAN RESOURCES POLICIES.**

2602 *The Human Resources Systems adopted by the University pursuant to Governing Law and this*  
 2603 *Policy, as set forth in Section V above shall embody the following human resources policies and*  
 2604 *principles:*

2605 *A. Election by Salaried Nonfaculty University Employees. Upon the adoption by the University of a*  
 2606 *University Human Resources System, all salaried nonfaculty University employees who were in the*  
 2607 *employment of the University as of the day prior to the Effective Date of its initial Management*  
 2608 *Agreement with the Commonwealth, shall be given written notice of their right to elect to participate in*  
 2609 *and be governed by either (i) the State human resources program set forth in Chapters 28 (§ 2.2-2800*  
 2610 *et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia and administered by the*  
 2611 *Department of Human Resource Management, or (ii) the University Human Resources System. A*  
 2612 *salaried nonfaculty University employee who elects to continue to be governed by the State human*  
 2613 *resources program described above shall continue to be governed by all State human resources and*  
 2614 *benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried*  
 2615 *nonfaculty University employee who elects in writing to participate in and be governed by the University*  
 2616 *Human Resources System, also, by that election, shall be deemed to have elected to be eligible to*  
 2617 *participate in and to be governed by the human resources, authorized alternative insurance, and*  
 2618 *severance plans, programs, policies and procedures that are or may be adopted by the University as*  
 2619 *part of that University Human Resources System.*

2620 *Each such salaried nonfaculty University employee, shall be given at least 90 days to make the*  
 2621 *election required by the prior paragraph. Such 90 day period shall begin to run on the date on which*  
 2622 *the University Human Resources System becomes effective for that University employee's classification of*  
 2623 *employees. If such a salaried nonfaculty University employee does not make an election by the end of*  
 2624 *that specified election period, that University employee shall be deemed not to have elected to*  
 2625 *participate in the University Human Resources System. If such a salaried nonfaculty University*  
 2626 *employee elects to participate in the University Human Resources System, that election shall be*  
 2627 *irrevocable. At least every two years, the University shall offer to salaried nonfaculty University*  
 2628 *employees who have elected to continue to participate in the state human resources program set forth in*  
 2629 *Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 an opportunity to elect to*  
 2630 *participate in the University Human Resources System; provided that, each time prior to offering such*  
 2631 *opportunity to such salaried nonfaculty University employees, and at least once every two years after*  
 2632 *the effective date of the University Human Resources System, the University shall make available to*  
 2633 *each of its salaried nonfaculty University employees a comparison of its human resources program for*  
 2634 *that classification of salaried nonfaculty University employee with the State human resources program*  
 2635 *for comparable State employees, including but not limited to a comparability assessment of*  
 2636 *compensation and benefits. A copy of the human resources program comparison shall be provided to the*  
 2637 *Department of Human Resource Management.*

2638 *B. Classification and Compensation.*

2639 *1. General. The Systems shall include classification and compensation plans that are fair and*  
 2640 *reasonable, and are based on the availability of University financial resources. The plans adopted by*  
 2641 *the University for its faculty and other Participating Covered Employees shall be independent of, and*  
 2642 *need not be based on, the classification and compensation plans of the Commonwealth, do not require*

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

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

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

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

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

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

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

#### 2686 *C. Benefits.*

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

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

2705 plan or plans, such alternative health insurance or faculty retirement plan or plans shall apply to and  
 2706 govern the University employees included in such plan or plans.

2707 The Systems may provide different benefits plans for reasonably different groups or classifications of  
 2708 employees, and may provide benefits to part-time employees. On the Effective Date of the University's  
 2709 initial Management Agreement with the Commonwealth, and until changed by the appropriate governing  
 2710 authority, the benefits plans provided by the University to Classified Employees and Participating  
 2711 Covered Employees shall be the benefits plans provided to that group or classification as of the date  
 2712 immediately prior to that Effective Date. On or after that Effective Date, alternative University group  
 2713 life, accidental death and dismemberment, and short- and long-term disability plans may be provided to  
 2714 eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the  
 2715 execution of participation agreements as provided in subsections B and C of § 23-38.119 of the Act,  
 2716 they may be provided by the appropriate State programs, but no contributions to the State programs by  
 2717 the University shall be required for Participating Covered Employees who do not participate in the  
 2718 programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted  
 2719 under current law in University employee benefit plans, other than Classified Employee benefits plans,  
 2720 shall be approved by the Board of Visitors, including the authority to increase the Cash Match  
 2721 Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and  
 2722 the authority to implement cafeteria-style benefits for University employees other than Classified  
 2723 Employees.

2724 Insurance and all proceeds there from provided pursuant to § 23-38.119 of the Act shall be exempt  
 2725 from legal process and may be subject to assignment as provided in subsection A of § 23-38.119.

2726 D. Employee Relations.

2727 1. General. The Systems shall contain provisions that protect the rights and privileges of University  
 2728 employees consistent with sound management principles and fair employment practice law.

2729 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety  
 2730 compliance with applicable law and regulations.

2731 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to  
 2732 the performance of job duties, and free from intimidation or coercion in violation of State or federal  
 2733 law, including sexual harassment or other discrimination.

2734 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific  
 2735 to policies and procedures for awarding, honoring, or otherwise recognizing University employees,  
 2736 including but not limited to those who have performed particularly meritorious service for the  
 2737 University, have been employed by the University for specified periods of time, or have retired from the  
 2738 University after lengthy service.

2739 5. Counseling Services. The Systems shall provide counseling services through the State's Employee  
 2740 Assistance Program or a University Employee Assistance Program to any eligible University employee  
 2741 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the  
 2742 circumstances under which the time necessary to participate in such counseling may be granted.

2743 6. Unemployment Compensation. The Systems shall ensure that University employees receive the full  
 2744 unemployment compensation benefits to which they are legally entitled, and that the University's liability  
 2745 is limited to legitimate claims for such benefits.

2746 7. Workers' Compensation. The Systems shall ensure that University employees have workers'  
 2747 compensation benefits to which they are legally entitled pursuant to the State Employees' Workers  
 2748 Compensation Program administered by the Department of Human Resource Management.

2749 8. Performance Planning and Evaluation. The Systems shall include one or more performance  
 2750 planning and evaluation processes for University employees that (i) establish and communicate the  
 2751 University's performance expectations, (ii) help develop productive working relationships, (iii) allow  
 2752 employees to present their views concerning their performance, (iv) identify areas for training or  
 2753 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify  
 2754 how superlative or inadequate performance shall be addressed, and (vii) ensure that all University  
 2755 employees are provided relevant information on the evaluation process. The Systems may include  
 2756 separate performance and evaluation processes for reasonably distinguishable groups of University  
 2757 employees. On the Effective Date of the University's initial Management Agreement with the  
 2758 Commonwealth, the existing merit-based performance management system for faculty shall continue,  
 2759 until amended by the University. On or after that Effective Date, nonfaculty salaried Participating  
 2760 Covered Employees may be subject to a variable merit-based performance management system.

2761 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all  
 2762 employees and to ensure safe, efficient University operations and compliance with the law, the Systems  
 2763 shall establish rules of personal conduct and standards of acceptable work performance for University  
 2764 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for  
 2765 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or

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

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

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

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

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

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

2828 force to which severance or Workforce Transition Act policies would apply.

2829 14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i)  
 2830 establish and maintain a work environment at the University that is free from the adverse effect of  
 2831 alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with  
 2832 the Virginia Polytechnic Institute and State University Alcohol and Other Drugs Policy, (iii) describe the  
 2833 range of authorized disciplinary action, including termination where appropriate, for violations of such  
 2834 policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide  
 2835 University employees access to assistance and treatment for problems involving alcohol and other drugs,  
 2836 (v) provide for the circumstances under which employees are required to report certain violations of the  
 2837 policies and procedures to their supervisor, and the University is required to report those violations to a  
 2838 federal contracting or granting agency, (vi) describe the circumstances under which personnel records  
 2839 of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and  
 2840 (vii) provide notice to University employees of the scope and content of the University alcohol and other  
 2841 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal  
 2842 Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment,  
 2843 reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing  
 2844 for University positions that are particularly safety sensitive, such as those requiring a Commercial  
 2845 Driver's License or the provision of patient care.

2846 15. *Background Checks.* The Systems shall include a process for conducting background checks,  
 2847 which may include but is not limited to reference checks, educational/professional credentialing checks,  
 2848 and conviction and driver's records checks on applicants for full-time or part-time positions at the  
 2849 University, and for addressing situations where employees do not disclose a conviction on their  
 2850 application or otherwise falsify their application with regard to information concerning their  
 2851 education/professional credential and/or prior convictions.

2852 16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other  
 2853 reasonable employee relations policies or procedures that the President, acting through the Executive  
 2854 Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited  
 2855 to, policies or procedures relating to orientation programs for new or re-employed University  
 2856 employees, an employee suggestion program, the responsibility of University employees for property  
 2857 placed in their charge, work breaks, inclement weather and emergencies, and employment outside the  
 2858 University.

2859 *E. Leave and Release Time.*

2860 The Systems shall include policies and procedures regarding leave for eligible employees. The  
 2861 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal  
 2862 uses. The Systems may provide for release time for such matters as the donation of blood, participation  
 2863 in an employee assistance program and other appropriate employment-related matters. On or after the  
 2864 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is  
 2865 adopted by the appropriate authority, the University shall continue to provide leave and release time to  
 2866 Participating Covered Employees in accordance with the leave and release time policies and procedures  
 2867 applicable to each classification of employees prior to that Effective Date. On or after that Effective  
 2868 Date, the University may provide an alternative leave and release time system for salaried nonfaculty  
 2869 Participating Covered Employees.

2870 *F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

2871 1. *Equal Employment Opportunity and Nondiscrimination.* The Systems shall contain policies and  
 2872 procedures to ensure that all aspects of human resources management, including the employment of  
 2873 University employees, meet all requirements of federal and state law, and of the relevant policies of the  
 2874 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

2875 2. *Employment.* The Systems shall include policies and procedures for the recruitment, selection and  
 2876 hiring of University employees that are based on merit and fitness, including where appropriate a  
 2877 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference  
 2878 checks and conviction record checks. On and after the Effective Date of its initial Management  
 2879 Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies  
 2880 through the University's job posting system, the Commonwealth's job posting system, and other external  
 2881 media as appropriate. The Systems shall establish designated veterans' re-employment rights in  
 2882 accordance with applicable law. In order to encourage employees to attain the highest level positions  
 2883 for which they are qualified, and to compensate employees for accepting positions of increased value  
 2884 and responsibility, the Systems shall include policies and procedures governing the promotion of  
 2885 employees, including the effect of promotion on an employee's compensation.

2886 On or after the Effective Date of the University's initial Management Agreement with the  
 2887 Commonwealth, all employees hired from other state agencies shall be Participating Covered  
 2888 Employees. University Classified Employees who change jobs within the University through a

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

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

2895 *G. Information Systems.*

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

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

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

2916

2917

### ATTACHMENT 3

2918

2919

#### *Memorandum of Understanding*

2920

*Between Virginia Polytechnic Institute and State University and the*

2921

*Department of Human Resources Management Regarding*

2922

*The Reporting of Human Resources Management Data*

2923

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

2928

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

2932

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

2934

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

2940

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

2945

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

2948

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

2950

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

- 2951 a. *Monthly Employee Position Report*
- 2952 b. *Annual report on salaried, wage, and contract employees*
- 2953 *The undersigned hereby agree to the provisions contained in the MOU.*

2954 APPROVALS:  
 2955 *Virginia Polytechnic Institute and State University:*

2956  
 2957 By: \_\_\_\_\_ Date \_\_\_\_\_  
 2958 *Executive Vice President & Chief Operating Officer*

2959  
 2960  
 2961 *Department of Human Resources Management:*

2962  
 2963 By: \_\_\_\_\_ Date \_\_\_\_\_  
 2964 *Director, Department of Human Resource Management*

2965 EXHIBIT F

2966 MANAGEMENT AGREEMENT  
 2967 BETWEEN  
 2968 THE COMMONWEALTH OF VIRGINIA  
 2969 AND  
 2970 VIRGINIA POLYTECHNIC INSTITUTE  
 2971 AND STATE UNIVERSITY  
 2972 PURSUANT TO  
 2973 THE RESTRUCTURED HIGHER EDUCATION  
 2974 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
 2975 ACT OF 2005

2976 POLICY GOVERNING  
 2977 FINANCIAL OPERATIONS AND MANAGEMENT

2978  
 2979  
 2980 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
 2981 AND STATE UNIVERSITY  
 2982 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

2983 I. PREAMBLE.

2984 *The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter*  
 2985 *4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting*  
 2986 *additional authority to institutions of higher education for financial operations and management, subject*  
 2987 *to the adoption of policies by their governing boards and the approval of management agreements to be*  
 2988 *negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board*  
 2989 *of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations*  
 2990 *and management.*

2991 *This Policy is intended to cover the authority that may be granted to the University pursuant to*  
 2992 *Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the*  
 2993 *Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act*  
 2994 *and the University's Enabling Legislation, are not affected by this Policy.*

2995 II. DEFINITIONS.

2996 *As used in this policy, the following terms shall have the following meanings, unless the context*  
 2997 *requires otherwise:*

2998 *"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*  
 2999 *Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*

3000 *"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and*  
 3001 *State University.*

3002 *"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with*  
 3003 *the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has*  
 3004 *entered into a Management Agreement with the Commonwealth to be governed by the provisions of*  
 3005 *Subchapter 3 of the Act.*

3006 *"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of*  
 3007 *Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and*

3012 *missions of the University.*

3013 *"Effective Date" means the effective date of the initial Management Agreement between the*  
3014 *University and the Commonwealth.*

3015 *"Management Agreement" means the agreement required by subsection D of § 23- 38.88 of the Act*  
3016 *between the University and the Commonwealth of Virginia.*

3017 *"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section*  
3018 *9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from*  
3019 *general government funds, as defined in the December 20, 2004 Report to the Governor and General*  
3020 *Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

3021 *"University" means Virginia Polytechnic Institute and State University, consisting of the University*  
3022 *Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station*  
3023 *Division (State Agency 229).*

### 3024 *III. SCOPE OF POLICY.*

3025 *This Policy applies to the University's responsibility for management, investment and stewardship of*  
3026 *all its financial resources, including but not limited to, general, non-general and private funds. This*  
3027 *responsibility includes maintaining an independent uniform system of accounting, financial reporting,*  
3028 *and internal controls adequate to protect and account for the University's financial resources.*

3029 *Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the*  
3030 *benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative*  
3031 *Extension and the Agriculture Experiment Station Division , but Virginia Cooperative Extension and the*  
3032 *Agriculture Experiment Station Division shall not receive any additional independent financial*  
3033 *operations and management authority as a result of this Management Agreement beyond the*  
3034 *independent financial operations and management authority that it had prior to the Effective Date of the*  
3035 *University's initial Management Agreement with the Commonwealth or that it may be granted by law in*  
3036 *the future.*

### 3037 *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

3038 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*  
3039 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
3040 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*  
3041 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*  
3042 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*  
3043 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
3044 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*  
3045 *and procedures.*

### 3046 *V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.*

3047 *The President, acting through the Executive Vice President and Chief Operating Officer, shall*  
3048 *continue to be authorized by the Board to maintain existing and implement new policies governing the*  
3049 *management of University financial resources. These policies shall continue to (i) ensure compliance*  
3050 *with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting*  
3051 *principles employed by the Commonwealth, including the use of fund accounting principles, with regard*  
3052 *to the establishment of the underlying accounting records of the University and the allocation and*  
3053 *utilization of resources within the accounting system, including the relevant guidance provided by the*  
3054 *State Council of Higher Education for Virginia chart of accounts with regard to the allocation and*  
3055 *proper use of funds from specific types of fund sources, (iii) provide adequate risk management and*  
3056 *internal controls to protect and safeguard all financial resources, including moneys transferred to the*  
3057 *University pursuant to a general fund appropriation, and ensure compliance with the requirements of*  
3058 *the Appropriation Act.*

3059 *The financial management system shall continue to include a financial reporting system to satisfy*  
3060 *both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,*  
3061 *as specified in the related State Comptroller's Directives, and the University's separately audited*  
3062 *financial statements. To ensure observance of limitations and restrictions placed on the use of the*  
3063 *resources available to the University, the accounting and bookkeeping system of the University shall*  
3064 *continue to be maintained in accordance with the principles prescribed for governmental organizations*  
3065 *by the Governmental Accounting Standards Board.*

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

3074 addition to CARS, but shall have its own financial reporting system. The University's financial reporting  
 3075 system shall provide (i) summary monthly reports for State agencies including, but not limited to, the  
 3076 Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and  
 3077 Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for  
 3078 Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on  
 3079 Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible  
 3080 with the Commonwealth's accounting system, as may be requested by the requesting State agency, and  
 3081 (ii) such other special reports as may be requested from time to time.

3082 VI. FINANCIAL MANAGEMENT POLICIES.

3083 The President, acting through the Executive Vice President and Chief Operating Officer, shall create  
 3084 and implement any and all financial management policies necessary to establish a financial management  
 3085 system with adequate risk management and internal control processes and procedures for the effective  
 3086 protection and management of all University financial resources. Such policies will not address the  
 3087 underlying accounting principles and policies employed by the Commonwealth and the University, but  
 3088 rather will focus on the internal operations of the University's financial management. These policies  
 3089 shall include, but need not be limited to, the development of a tailored set of finance and accounting  
 3090 practices that seek to support the University's specific business and administrative operating  
 3091 environment in order to improve the efficiency and effectiveness of its business and administrative  
 3092 functions. In general, the system of independent financial management policies shall be guided by the  
 3093 general principles contained in the Commonwealth's Accounting Policies and Procedures such as  
 3094 establishing strong risk management and internal accounting controls to ensure University financial  
 3095 resources are properly safeguarded and that appropriate stewardship of public funds is obtained  
 3096 through management's oversight of the effective and efficient use of such funds in the performance of  
 3097 University programs.

3098 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University  
 3099 shall continue to follow the Commonwealth's accounting policies until such time as specific alternate  
 3100 policies can be developed, approved and implemented. Such alternate policies shall include applicable  
 3101 accountability measures and shall be submitted to the State Comptroller for review and comment before  
 3102 they are implemented by the University.

3103 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

3104 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the  
 3105 University shall have the power and authority to manage all monies received by it. All State general  
 3106 funds to be allocated to the University shall remain subject to the appropriations process.

3107 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher  
 3108 Education for Virginia ("SCHEV") annually shall assess and certify to the Governor and General  
 3109 Assembly the degree to which each public institution of higher education of the Commonwealth has met  
 3110 the financial and administrative management and educational-related performance benchmarks called  
 3111 for by that subsection and approved as part of the Appropriation Act then in effect for the State goals  
 3112 and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to  
 3113 § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full  
 3114 fiscal year for which the financial and administrative management and educational-related performance  
 3115 benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for  
 3116 all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has  
 3117 been certified during the fiscal year by SCHEV as having met such institutional performance  
 3118 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain  
 3119 financial incentives, including the interest on the tuition and fees and other non-general fund  
 3120 Educational and General Revenues deposited into the State Treasury by the public institution of higher  
 3121 education.

3122 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for  
 3123 which it has received such certification from SCHEV, the University is authorized to hold and invest  
 3124 tuition, Educational and General ("E&G") fees, research and sponsored program funds, auxiliary  
 3125 enterprise funds, and all other non-general fund revenues subject to the following requirements:

3126 i) The University shall deposit such funds in the State Treasury pursuant to the State process in  
 3127 place at the time of such deposit;

3128 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section  
 3129 IX below;

3130 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall  
 3131 hold in escrow all interest earned on the University's tuition and fees and other non-general fund  
 3132 Educational and General Revenues. Upon receipt of the required State Council of Higher Education for  
 3133 Virginia certification that the University has met such institutional performance benchmarks and the  
 3134 conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a

3135 non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year,  
 3136 equivalent to the amount deposited in the escrow account as the financial incentive provided in  
 3137 subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes related  
 3138 to its mission. If public institutions of higher education of the Commonwealth are permitted, or the  
 3139 University in particular is permitted, by the Appropriation Act or other law to retain or be paid the  
 3140 interest the Commonwealth would have earned on sponsored programs and research funds, then this  
 3141 paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

3142 iv) If in any given year the University does not receive the certification from the State Council of  
 3143 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by  
 3144 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall  
 3145 transfer to the general fund the balance in the escrow account as of June 30 of that year.

3146 v) Beginning on the effective date of its initial Management Agreement with the University until the  
 3147 beginning of the first fiscal year following the fiscal year for which it has received the required  
 3148 certification from SCHEV, the University shall continue to deposit tuition and all other non-general  
 3149 funds with the State Treasurer by the same process that it would have been required to use if it had not  
 3150 entered into a Management Agreement with the Commonwealth.

3151 vi) On the first business day of the first fiscal year following the fiscal year for which it has received  
 3152 the required certification from SCHEV, the University may draw down all cash balances held by the  
 3153 State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored  
 3154 programs, auxiliary enterprises, and all other non-general fund revenues.

3155 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay  
 3156 these funds to the University as specified in Section IX below.

3157 The University also shall have sum sufficient appropriation authority for all non-general funds as  
 3158 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations  
 3159 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general  
 3160 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of  
 3161 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be  
 3162 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of  
 3163 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to  
 3164 the Department of Planning and Budget by July 31 of the subsequent fiscal year.

3165 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other  
 3166 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income  
 3167 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the  
 3168 intent of the Commonwealth and the University that the University shall be exempt from the revenue  
 3169 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,  
 3170 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the  
 3171 University that the University shall be entitled to retain non-general fund savings generated from  
 3172 changes in Commonwealth rates and charges, including but not limited to health, life, and disability  
 3173 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than  
 3174 reverting such savings back to the Commonwealth. This financial resource policy assists the University  
 3175 by providing the framework for retaining and managing non-general funds, for the receipt of general  
 3176 funds, and for the use and stewardship of all these funds.

3177 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
 3178 continue to provide oversight of the University's cash management system which is the framework for  
 3179 the retention of non-general funds. The Internal Audit Department of the University shall periodically  
 3180 audit the University's cash management system in accordance with appropriate risk assessment models  
 3181 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight  
 3182 shall continue to be provided through the annual audit and assessment of internal controls performed by  
 3183 the Auditor of Public Accounts. For the receipt of general and non-general funds, the University shall  
 3184 conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code  
 3185 of Virginia as it currently exists and from time to time may be amended.

#### 3186 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

3187 The President, through the Executive Vice President and Chief Operating Officer, shall continue to  
 3188 be authorized to create and implement any and all Accounts Receivable Management and Collection  
 3189 policies as part of a system for the management of University financial resources. The policies shall be  
 3190 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the  
 3191 Code of Virginia such that the University shall take all appropriate and cost effective actions to  
 3192 aggressively collect accounts receivable in a timely manner.

3193 These shall include, but not be limited to, establishing the criteria for granting credit to University  
 3194 customers; establishing the nature and timing of collection procedures within the above general  
 3195 principles; and the independent authority to select and contract with collection agencies and, after  
 3196 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all

3197 collection activities for all University accounts receivable such as reporting delinquent accounts to  
 3198 credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In  
 3199 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's  
 3200 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and  
 3201 the State Comptroller to implement such Programs, and shall provide a quarterly summary report of  
 3202 receivables to the Department of Accounts in accordance with the reporting procedures established  
 3203 pursuant to the Virginia Debt Collection Act.

3204 IX. DISBURSEMENT MANAGEMENT.

3205 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
 3206 continue to be authorized to create and implement any and all disbursement policies as part of a system  
 3207 for the management of University financial resources. The disbursement management policies shall  
 3208 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in  
 3209 the execution of the University's operations. These policies also shall continue to address the timing of  
 3210 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the  
 3211 appropriateness of certain goods or services relative to the University's mission, including travel-related  
 3212 disbursements. Further, the University's disbursement policy shall continue to provide for the  
 3213 mechanisms by which payments are made including the use of charge cards, warrants, and electronic  
 3214 payments. Since the University no longer will interface to the CARS system or any replacement for the  
 3215 CARS system for disbursements, the University shall establish its own mechanisms for electronic  
 3216 payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to  
 3217 the Commonwealth's Debt Set-Off Collection Programs.

3218 Beginning with the fiscal year after the first fiscal year for which it first receives the required  
 3219 certification from SCHEV, the University may draw down its general fund appropriations (subject to  
 3220 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.  
 3221 Such funds shall be available to the University for disbursement as provided in the then-current rules of  
 3222 the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in  
 3223 accordance with the following schedule: i) the University may draw down one-twenty-fourth (1/24) of its  
 3224 annual general fund appropriation for Educational and General programs on the first and fifteenth days  
 3225 of each month, and up to 50 percent of its annual general fund appropriation for Student Financial  
 3226 Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after  
 3227 February 1 of each year in order to meet student obligations;

3228 ii) the University may draw down the sum of all tuition and E&G fees and all other nongeneral  
 3229 revenues deposited to the State Treasury each day on the same business day they were deposited; and

3230 iii) the University anticipates that expenditures could exceed available revenues from time to time  
 3231 during the year if the above disbursement schedule is used. When the University projects a cash deficit  
 3232 is likely in activities supported by general fund appropriations, the University may make a request to the  
 3233 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury,  
 3234 in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

3235 These disbursement policies shall authorize the President, acting through the Executive Vice  
 3236 President and Chief Operating Officer, to independently select, engage, and contract for such  
 3237 consultants, accountants, and financial experts, and other such providers of expert advice and  
 3238 consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may  
 3239 be necessary or desirable in his or her discretion. The policies also shall continue to include the ability  
 3240 to locally manage and administer the Commonwealth's credit card and cost recovery programs related  
 3241 to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those  
 3242 programs, provided that the University shall submit the credit card and cost recovery aspects of its  
 3243 financial and operations policies to the State Comptroller for review and comment prior to implementing  
 3244 those aspects of those policies. The disbursement policies shall ensure that adequate risk management  
 3245 and internal control procedures shall be maintained over previously decentralized processes for public  
 3246 records, payroll, and non-payroll disbursements. The University shall continue to provide summary  
 3247 quarterly prompt payment reports to the Department of Accounts in accordance with the reporting  
 3248 procedures established pursuant to the Prompt Payment Act.

3249 The University's disbursement policies shall be guided by the principles of the Commonwealth's  
 3250 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the  
 3251 Effective Date of its initial Management Agreement with the Commonwealth, the University shall  
 3252 continue to follow the Commonwealth's disbursement policies until such time as specific alternative  
 3253 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the  
 3254 State Comptroller for review and comment prior to their implementation by the University.

3255 X. DEBT MANAGEMENT.

3256 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
 3257 continue to be authorized to create and implement any and all debt management policies as part of a

3258 *system for the management of University financial resources.*

3259 *Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,*  
 3260 *or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury*  
 3261 *Board, and that are consistent with debt capacity and management policies and guidelines established*  
 3262 *by its Board of Visitors, without obtaining the consent of any legislative body, elected official,*  
 3263 *commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without*  
 3264 *any proceedings or conditions other than those specifically required by Subchapter 3 of the Act;*  
 3265 *provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds*  
 3266 *pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any*  
 3267 *new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for*  
 3268 *review and comment prior to its adoption by the University.*

3269 *The University recognizes that there are numerous types of financing structures and funding sources*  
 3270 *available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by*  
 3271 *the President, acting through the Executive Vice President and Chief Operating Officer, within the*  
 3272 *context of the overall portfolio to ensure that any financial product or structure is consistent with the*  
 3273 *University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the*  
 3274 *Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a*  
 3275 *full understanding of the transaction, including (i) the identification of potential risks and benefits, and*  
 3276 *(ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or*  
 3277 *financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be*  
 3278 *authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.*

3279 **XI. INVESTMENT POLICY.**

3280 *It is the policy of the University to invest its operating and reserve funds solely in the interest of the*  
 3281 *University and in a manner that will provide the highest investment return with the maximum security*  
 3282 *while meeting daily cash flow demands and conforming to the Investment of Public Funds Act*  
 3283 *(§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence*  
 3284 *and diligence under the circumstances then prevailing that a prudent person acting in a like capacity*  
 3285 *and familiar with such matters would use in the conduct of an enterprise of a like character and with*  
 3286 *like aims.*

3287 *Endowment investments shall be invested and managed in accordance with the Uniform Management*  
 3288 *of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.*

3289 *The Board of Visitors shall periodically review and approve the investment guidelines governing the*  
 3290 *University's operating and reserve funds.*

3291 **XII. INSURANCE AND RISK MANAGEMENT.**

3292 *By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any*  
 3293 *intent during the next biennium to withdraw from any insurance or risk management program made*  
 3294 *available to the University through the Commonwealth's Division of Risk Management and in which the*  
 3295 *University is then participating, to enable the Commonwealth to complete an adverse selection analysis*  
 3296 *of any such decision and to determine the additional costs to the Commonwealth that would result from*  
 3297 *any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University*  
 3298 *proceeds to withdraw from the insurance or risk management program, the University shall reimburse*  
 3299 *the Commonwealth for all such additional costs attributable to such withdrawal as determined by the*  
 3300 *Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University*  
 3301 *and the Commonwealth.*

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 3310  
 3311 **2. That the following Chapter 2 shall hereafter be known as the "2006 Management Agreement**  
 3312 **Between the Commonwealth of Virginia and The College of William and Mary in Virginia":**

3313 **CHAPTER 2.**

3314  
 3315  
 3316 **MANAGEMENT AGREEMENT**  
 3317 **BY AND BETWEEN**  
 3318 **THE COMMONWEALTH OF VIRGINIA**  
 3319 **AND**

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

3320 This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the
3321 Commonwealth of Virginia (hereafter, the "Commonwealth") and The College of William and Mary in
3322 Virginia (hereafter, "the College") provides as follows:
3323

3324 RECITALS

3325 WHEREAS the College has satisfied the conditions precedent set forth in subsections A and B of
3326 § 23-38.97 of the Code of Virginia to become a public institution of higher education of the
3327 Commonwealth governed by Subchapter 3 (§ 23-38.91 et seq.) of the Restructured Higher Education
3328 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code
3329 of Virginia ("Subchapter 3" and the "Act," respectively), as evidenced by:

3330 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the College
3331 held on April 22, 2005, indicate that an absolute two-thirds or more of the members voted to approve
3332 the resolution required by subsection A 1 of § 23-38.97 of the Act;

3333 2. Written Application to the Governor. The College has submitted to the Governor a written
3334 Application, dated November 2, 2005, with copies to the Chairmen of the House Committee on
3335 Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate
3336 Committee on Education and Health, expressing the sense of its Board of Visitors that the College is
3337 qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the College
3338 has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and

3339 3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act the Governor
3340 has found that the College has fulfilled the requirements of subsection A 2 of §23-38.97, and therefore
3341 has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the
3342 Commonwealth with the College; and

3343 WHEREAS, the College is therefore authorized to enter into this Management Agreement as provided
3344 in subsection D of § 23-38.88 and Subchapter 3 of the Act.

3345 AGREEMENT

3346 NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education
3347 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code
3348 of Virginia, and in consideration of the foregoing premises, the Commonwealth and the College do now
3349 agree as follows:

3350 ARTICLE 1. DEFINITIONS.

3351 As used in this Agreement, the following terms have the following meanings, unless the context
3352 requires otherwise:

3353 "Act" means the Restructured Higher Education Administrative and Financial Operations Act,
3354 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

3355 "Agreement" means "Management Agreement."

3356 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William
3357 and Mary in Virginia and the Virginia Institute of Marine Science.

3358 "College" means the College of William and Mary in Virginia (state agency 204) and the Virginia
3359 Institute of Marine Science (state agency 268).

3360 "Covered Employee" means any person who is employed by the College on either a salaried or wage
3361 basis.

3362 "Covered Institution" means, on and after the effective date of its initial management agreement with
3363 the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has
3364 entered into a management agreement with the Commonwealth to be governed by and in accordance
3365 with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.

3366 "Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
3367 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
3368 missions of the individual public institutions of higher education of the Commonwealth.

3369 "Management Agreement" means this agreement between the Commonwealth of Virginia and the
3370 College as required by subsection D of § 23-38.88 and Subchapter 3 of the Act.

3371 "Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the
3372 College.

3373 "Public institution of higher education" means those two-year and four-year institutions enumerated
3374 in § 23-14 of the Code of Virginia.

3375 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

3376 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability. Subchapter 3 of the
3377 Act provides that, upon the execution of, and as of the effective date for, this Management Agreement,
3378 the College shall become a Covered Institution entitled to be granted by the Commonwealth and to
3379 exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in
3380 this Management Agreement. In general, subject to its management agreement with the Commonwealth,

3381 *status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is*  
3382 *intended to replace (i) the post-General Assembly authorization prior-approval system of reviews,*  
3383 *approvals, policies and procedures carried out and implemented by a variety of central State agencies*  
3384 *with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully*  
3385 *responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its*  
3386 *management agreement with the Commonwealth.*

3387 *SECTION 2.1.1. Assessments and Accountability. The College and its implementation of the*  
3388 *enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board*  
3389 *of Visitors polices attached hereto as Exhibits G through L, shall be subject to the reviews, assessments,*  
3390 *and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint*  
3391 *Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or*  
3392 *(ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or*  
3393 *Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by*  
3394 *law other than the Act.*

3395 *SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and*  
3396 *limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement;*  
3397 *Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth*  
3398 *and the College agree that the Commonwealth has granted to the College by this Management*  
3399 *agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of*  
3400 *the College attached hereto as Exhibits G through L and governing (1) the undertaking and*  
3401 *implementation of capital projects, and other acquisition and disposition of property (Exhibit G), (2) the*  
3402 *leasing of property, including capital leases (Exhibit H), (3) information technology (Exhibit I), (4) the*  
3403 *procurement of goods, services, including certain professional services, insurance, and construction*  
3404 *(Exhibit J), (5) human resources (Exhibit K), and (6) its system of financial management (Exhibit L),*  
3405 *including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to establish tuition,*  
3406 *fees, room, board, and other charges consistent with sum sufficient appropriation authority for*  
3407 *non-general funds as provided by the Governor and the General Assembly in the Commonwealth's*  
3408 *biennial appropriations authorization. Subject to the specific conditions and limitations contained in*  
3409 *Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement,*  
3410 *and in one or more of the Board of Visitors policies attached hereto as Exhibits G through L, the*  
3411 *Commonwealth and the College agree that the Commonwealth has expressly granted to the College all*  
3412 *the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of*  
3413 *the Act.*

3414 *The Board of Visitors of the College shall at all times be fully and ultimately accountable for the*  
3415 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
3416 *of, this Management Agreement and the policies adopted by it and attached as Exhibits G through L.*  
3417 *Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally*  
3418 *permissible procedures, specifically delegate the duties and responsibilities set forth in this Management*  
3419 *Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the*  
3420 *Board and attached hereto as Exhibits G through L, to a person or persons within the College.*

3421 *SECTION 2.1.3. Reimbursement by the College of Certain Costs. By July 1 of each odd-numbered*  
3422 *year, the College shall inform the Secretary of Finance of any intent during the next biennium to*  
3423 *withdraw from any health or other group insurance or risk management program made available to the*  
3424 *College through any agency, body corporate, political subdivision, authority, or other entity of the*  
3425 *Commonwealth, and in which the College is then participating, to enable the Commonwealth's actuaries*  
3426 *to complete an adverse selection analysis of any such decision and to determine the additional costs to*  
3427 *the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs*  
3428 *to the Commonwealth, the College proceeds to withdraw from such health or other group insurance or*  
3429 *risk management program, the College shall, pursuant to subdivision D 2 c of § 23-38.88, reimburse the*  
3430 *Commonwealth for all such additional costs attributable to such withdrawal as determined by the*  
3431 *Commonwealth's actuaries.*

3432 *SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subsection D 2*  
3433 *c of § 23-38.88 of the Act, the College has given consideration to potential future impacts of tuition*  
3434 *increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has discussed*  
3435 *those potential impacts with the Executive Director and staff of that Plan and with parties in the*  
3436 *Administration who participated in the development of this Management Agreement. The Executive*  
3437 *Director of the Plan has provided to the College and the Commonwealth the Plan's assumptions*  
3438 *underlying the contract pricing of the program.*

3439 *SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to*  
3440 *§ 23-38.110 of the Act and subject to the provisions of this Management Agreement, the College may be*  
3441 *exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43 (§ 2.2-4300 et*  
3442 *seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA*

3443 must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors  
 3444 shall adopt and comply with procurement policies that are based upon competitive principles and seek  
 3445 competition to the maximum practical degree. The Policy Governing the Procurement of Goods,  
 3446 Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules  
 3447 Governing Procurement of Goods, Services, Insurance, and Construction (the "Procurement Rules")  
 3448 attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA  
 3449 required by subsections A and B of § 23-38.110 of the Act.

3450 Subsection D of § 23-38.110 of the Act requires that the College identify the public, educational, and  
 3451 operational interests served by any procurement rule or rules that deviate from those in the VPPA. The  
 3452 adopted Board of Visitors policy on procurement and the Procurement Rules provide the College with  
 3453 the autonomy to administer its procurement process while fully adhering to the principle that  
 3454 competition should be sought to the maximum extent feasible. This autonomy will better position the  
 3455 College to support the requirements of its growing teaching, research and outreach missions. Greater  
 3456 autonomy in procurement will improve internal capacity to respond quickly to emergent material and  
 3457 service issues and, therefore, enable the College to be more efficient and effective in meeting the  
 3458 Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced.  
 3459 Taken collectively, the College's procurement policies and rules that differ from those required by the  
 3460 VPPA will enhance procurement "best practices" as they currently are being observed within the higher  
 3461 education community nationally. Further, these changes will provide efficiencies to both the College  
 3462 and public sector suppliers.

3463 SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that  
 3464 a Covered Institution include in its management agreement with the Commonwealth the quantification of  
 3465 cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter  
 3466 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been  
 3467 implemented by the College, the parties agree that the College is not in a position to quantify any such  
 3468 cost savings at this time, although the College expects that there will be cost savings resulting from the  
 3469 additional authority granted to the College pursuant to Subchapter 3 of the Act and that such cost  
 3470 savings will be part of the determinations made during the reviews, assessments, and audits to be  
 3471 conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative  
 3472 Audit and Review Commission, and the State Council of Higher Education for Virginia, and as  
 3473 otherwise described in Section 2.1.1 above.

3474 SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the College shall  
 3475 continue to fully participate in, and receive funding support from the many and varied programs  
 3476 established now or in the future by the Commonwealth to provide support for Virginia's public  
 3477 institutions of higher education and for Virginians attending such institutions, including but not limited  
 3478 to: the state capital outlay and bond financing initiatives undertaken from time to time by the  
 3479 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq.  
 3480 of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the  
 3481 Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student  
 3482 financial assistance programs; and other statewide programs or initiatives that exist, or may be  
 3483 established, in support of the Commonwealth's higher education institutions, programs, or activities.

3484 SECTION 2.1.8. Implied Authority. Pursuant to subsection D 1 of § 23-38.88 of the Act, the only  
 3485 implied authority granted to the College by this Management Agreement is that implied authority that is  
 3486 actually necessary to carry out the expressed grant of financial or operational authority contained in  
 3487 this Agreement or in the policies adopted by the College's Board of Visitors and attached hereto as  
 3488 Exhibits G through L.

3489 SECTION 2.1.9. Exercise of Authority. The College and the Commonwealth acknowledge and agree  
 3490 that the execution of this Management Agreement constitutes the conclusion of a process that, as of the  
 3491 effective date of this Agreement, confers upon the College the enhanced authority and operating  
 3492 flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act.  
 3493 Therefore, without any further conditions or requirements, the College shall, on and after the effective  
 3494 date of this Management Agreement, be authorized to exercise the authority conferred upon it by this  
 3495 Management Agreement, the policies adopted by its Board of Visitors attached hereto as Exhibits G  
 3496 through L, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the  
 3497 extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited  
 3498 by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through  
 3499 L.

3500 The College and the Commonwealth also acknowledge and agree that, pursuant to subsection A of  
 3501 § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of  
 3502 Visitors of the College shall assume full responsibility for management of the College, subject to the  
 3503 requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this

3504 Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The  
3505 Board of Visitors shall be fully accountable for (a) the management of the College as provided in the  
3506 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,  
3507 and (c) meeting such other provisions as are set forth in this Management Agreement.

3508 SECTION 2.2. State Goals.

3509 SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education  
3510 of the Commonwealth by subsection B of § 23-38.88, prior to August 1, 2005, the Board of Visitors of  
3511 the College adopted the resolution setting forth its commitment to the Governor and the General  
3512 Assembly to meet the State goals specified in that subsection B. In addition to the above commitments,  
3513 the College commits to furthering these State goals by:

3514 1. In addition to its six-year target of achieving \$68 million in external research by 2011-12, the  
3515 College, including the Virginia Institute of Marine Science, commits to match from institutional funds,  
3516 other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided  
3517 by the State in the Appropriation Act above the amount provided from institutional funds for research in  
3518 2005-06.

3519 2. In a concerted effort to provide educational opportunities to Virginia students attending  
3520 institutions in the Virginia Community College System ("VCCS") and Richard Bland College, the  
3521 College commits to work with Virginia Polytechnic Institute and State University ("Virginia Tech") and  
3522 the University of Virginia to establish a program under which these three institutions will increase  
3523 significantly the number of such students transferring to their institutions. Specifically, pursuant to this  
3524 program, the College, Virginia Tech and the University of Virginia collectively commit to enroll as  
3525 transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not  
3526 less than approximately 300 new such transfer students each year over the number enrolled in 2004-05,  
3527 for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not  
3528 less than approximately 650 new such transfer students each year over the number enrolled in 2004-05,  
3529 for a total of approximately 1,250 such transfer students each year. The three institutions have agreed  
3530 that they will mutually determine how to divide the responsibility for these additional transfer students  
3531 equitably among themselves.

3532 3. As an institutional priority and obligation, the College commits to the Governor and General  
3533 Assembly to work meaningfully and visibly with an economically distressed region or local area of the  
3534 Commonwealth, not smaller in size than a city or county, which lags the Commonwealth in education,  
3535 income, employment, and other factors. The College commits to establish a formal partnership with that  
3536 area to develop jointly a specific action plan that builds on the College's programmatic strengths and  
3537 uses the College's faculty, staff and, where appropriate, student expertise to stimulate economic  
3538 development in the area to make the area more economically viable, and to improve student  
3539 achievement and teacher and administrator skill sets in a school, schools, or the school system in that  
3540 area. The College shall submit the action plan to the Governor and General Assembly by no later than  
3541 December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each  
3542 year on its progress in implementing the action plan during the prior fiscal year.

3543 SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the  
3544 Code of Virginia, the College, along with all other public institutions of higher education of the  
3545 Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia  
3546 ("SCHEV") by October 1, 2005, an institution-specific Six-Year Plan addressing the College's academic,  
3547 financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12.  
3548 Subsection A of § 23-9.2:3.02 requires the College to update this Six-Year Plan by October 1 of each  
3549 odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement  
3550 address, among other issues, such matters as the College's in-state undergraduate student enrollment, its  
3551 financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students.  
3552 These matters are addressed below and in the College's Six-Year Plan submitted to SCHEV, and the  
3553 parties therefore agree that the College's Six-Year Plan and the description below meet the requirement  
3554 of subsection B of § 23-38.97 of the Act.

3555 Subsection B of § 23-38.104 of the Act requires the Board of Visitors of the College to include in  
3556 this Management Agreement the College's commitment to provide need-based grant aid for middle- and  
3557 lower-income Virginia students in a manner that encourages student enrollment and progression without  
3558 respect to potential increases in tuition and fees. The College's commitment in this regard is clear.

3559 The College of William and Mary, under the leadership of its new president, has set as a goal  
3560 increasing the economic and social diversity of the student body at the College. The College is  
3561 absolutely committed to assuring access to any qualified and admitted Virginian regardless of family  
3562 income. The primary initiative in this area is Gateway William and Mary, which shall be substantially  
3563 as described in the remainder of this Section 2.2.2, as may amended from time to time by the Board of  
3564 Visitors of the College and reported to the Secretaries of Finance and Education and the Chairmen of  
3565 the Senate Committee on Finance and the House Committee on Appropriations.

3566 At the present time, any needy Virginian at the College receives a combination of grants and loans  
 3567 so that his or her indebtedness will not exceed one year's cost of education. This is as generous as any  
 3568 other public institution in the state or region. Nonetheless, this means that many needy Virginians,  
 3569 including those with low family incomes, will graduate with more than \$16,000 in indebtedness. This  
 3570 burdensome level of debt may discourage students from lower SES groups from applying to or accepting  
 3571 admission from the College. And, if they do attend, their legitimate concern with respect to debt  
 3572 repayment may discourage them from some career choices like K-12 education or from going on to  
 3573 graduate or professional school for fear of adding even more to their personal indebtedness. Hence,  
 3574 over the period of the six-year plan, the College of William and Mary is committed to seeking, from all  
 3575 sources - state-appropriated scholarship funds, federal, and private support — sufficient funds to assure  
 3576 that 1) we meet 100% of financial need for in-state undergraduates and 2) any student whose family's  
 3577 annual income is less than \$40,000 can spend four years at the College and graduate debt-free. The  
 3578 Gateway William and Mary initiative is one of the highest priorities for our new president. In addition,  
 3579 both through our goal to increase the numbers of VCCS graduates who transfer to the College and  
 3580 aggressive efforts to recruit in-state students from lower SES groups, we hope to double the number of  
 3581 students who would receive assistance through the Gateway initiative from 280 students to 560 students  
 3582 by the end of the six-year planning period.

3583 As noted, we will continue our commitment to providing additional financial aid through grants and  
 3584 loans to those Virginians whose families are not in the lower SES groups, but who still have  
 3585 demonstrable need. Currently approximately 900 in-state undergraduate students receive need-based  
 3586 aid. The College commits to meeting 100% of the need for these students consistent with the federal  
 3587 definition of unmet needs over the six year planning period. In addition, as tuition and fees increase  
 3588 over the period of the six-year plan, we will readjust the level of financial aid for all students to assure  
 3589 that insufficiency of family resources will not be a barrier to attending the College.

3590 The Commonwealth and the College agree that this commitment meets the requirements of subsection  
 3591 B of § 23-38.104 of the Act.

3592 SECTION 2.3. Authority Granted to the Virginia Institute of Marine Science. The Virginia Institute  
 3593 of Marine Science (hereafter, "the Institute") shall receive the benefits of the additional financial and  
 3594 operational authority granted by this Management Agreement as it and the policies adopted by the  
 3595 Board of Visitors attached as Exhibits G through L are implemented by the College on behalf of the  
 3596 Institute, but the Institute shall not receive any additional independent financial or operational authority  
 3597 as a result of this Management Agreement or the attached Board of Visitors policies beyond the  
 3598 independent financial and operational authority that it had prior to the effective date of this  
 3599 Management Agreement or that it may be granted by law in the future.

3600 SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, the College shall  
 3601 be governed and administered in the manner provided not only in this Management Agreement, but also  
 3602 as provided in the Appropriation Act then in effect and the College's Enabling Legislation.

3603 SECTION 2.4.1. The Appropriation Act. The Commonwealth and the College agree that, pursuant  
 3604 to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is  
 3605 a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act,  
 3606 or this Management Agreement, or the Board of Visitors policies attached to this Management  
 3607 Agreement as Exhibits G through L, the provisions of the Appropriation Act shall control, and shall  
 3608 continue to control unless provided otherwise by law.

3609 SECTION 2.4.2. The College's Enabling Legislation. As provided in subsection C of § 23-38.91 of  
 3610 the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the College's  
 3611 Enabling Legislation, the Enabling Legislation shall control.

3612 SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § 23-38.92 of the  
 3613 Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of  
 3614 this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management,  
 3615 supervision, regulation, and control of public institutions of higher education shall be applicable to the  
 3616 College as provided by the express terms of this Management Agreement. As further provided in  
 3617 subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any  
 3618 provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this  
 3619 Management Agreement shall control.

3620 SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of  
 3621 § 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,  
 3622 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,  
 3623 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  
 3624 of Virginia, the College shall remain a public institution of higher education of the Commonwealth  
 3625 following the effective date of this Management Agreement, and shall retain the authority granted and  
 3626 any obligations required by such provisions, unless and until provided otherwise by law other than the

3627 Act. In addition, the College shall retain the authority, and any obligations related to the exercise of  
3628 such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et  
3629 seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.),  
3630 Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.),  
3631 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  
3632 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  
3633 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  
3634 seq.), unless and until provided otherwise by law other than the Act.

3635 SECTION 2.4.5. Public Access to Information. As provided in § 23-38.95 of the Act, the College  
3636 shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information  
3637 Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct  
3638 business pursuant to § 2.2-3709 if expressly named therein and, in all cases, may conduct business as a  
3639 "state public body" for purposes of subsection B of § 2.2-3708.

3640 SECTION 2.4.6. Conflicts of Interests. As provided in § 23-38.96 of the Act, the provisions of the  
3641 State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) that are  
3642 applicable to officers and employees of a state governmental agency shall continue to apply to the  
3643 members of the Board of Visitors of the College and to its Covered Employees.

3644 SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other  
3645 powers and authorities granted to the College pursuant to any other sections of the Code of Virginia,  
3646 including other provisions of the Act, are not affected by this Management Agreement or the Board  
3647 policies attached hereto as Exhibits G through L.

#### 3648 ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, 3649 MANAGEMENT AGREEMENT.

3650 SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the  
3651 Board of Visitors policies attached hereto as Exhibits G through L shall be reported to the Secretaries  
3652 of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on  
3653 Finance and the House Committee on Appropriations and shall be posted on the College's website. The  
3654 change or deviation shall become effective unless one of the above persons notifies the College in  
3655 writing within 60 days that the change or deviation is substantial and material. Any substantial and  
3656 material change or deviation shall require the execution by the parties of an amendment to this  
3657 Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of  
3658 § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to  
3659 subsection D 4 of § 23-38.88 of the Act.

3660 SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.

3661 SECTION 3.2.1. Governor. Pursuant to subsection D 4 of § 23-38.88, and § 23-38.98, of the Act, if  
3662 the Governor makes a written determination that the College is not in substantial compliance with the  
3663 terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor  
3664 shall provide a copy of that written determination to the Rector of the Board of Visitors of the College  
3665 and to the members of the General Assembly, and (ii) the College shall develop and implement a plan  
3666 of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance  
3667 with the terms of this Management Agreement and with the requirements of the Act, as soon as  
3668 practicable, and shall provide a copy of such corrective action plan to the members of the General  
3669 Assembly. If after a reasonable period of time after the corrective action plan has been implemented by  
3670 the College, the Governor determines that the institution is not yet in substantial compliance with this  
3671 Management Agreement or the requirements of the Act, the Governor may void this Management  
3672 Agreement. Upon the Governor voiding this Management Agreement, the College shall no longer be  
3673 allowed to exercise any restructured financial or operational authority pursuant to the provisions of  
3674 Subchapter 3 of the Act unless and until the College has entered into a subsequent management  
3675 agreement with the Secretary or Secretaries designated by the Governor or the voided Management  
3676 Agreement is reinstated by the General Assembly.

3677 SECTION 3.2.2. General Assembly. As provided in subsection D 4 of § 23-38.88 of the Act, the  
3678 General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to  
3679 § 23-38.98 of the Act, the College's status as a Covered Institution governed by Subchapter 3 of the Act  
3680 may be revoked by an act of the General Assembly (i) if the College fails to meet the requirements of  
3681 Subchapter 3 of the Act, or (ii) if the College fails to meet the requirements of this Management  
3682 Agreement.

#### 3683 ARTICLE 4. GENERAL PROVISIONS.

3684 SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied,  
3685 shall be construed as conferring any third-party beneficiary status on any person or entity.

3686 SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § 23-38.88 of the Act, the College  
3687 and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to  
3688 the same sovereign immunity to which they would be entitled if the College were not governed by the

3689 Act; provided that the Virginia Tort Claims Act, § 8.01-195.1 et seq. of the Code of Virginia, and its  
3690 limitations on recoveries shall remain applicable with respect to the College.

3691 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June  
3692 30, 2010.

3693 WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of  
3694 November, 2005, and shall become effective on the effective date of the legislation enacted into law  
3695 providing for the terms of such Agreement.

3696 -  
3697 EXHIBIT G

3698 MANAGEMENT AGREEMENT  
3699 BETWEEN  
3700 THE COMMONWEALTH OF VIRGINIA  
3701 AND  
3702 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA  
3703 PURSUANT TO  
3704 THE RESTRUCTURED HIGHER EDUCATION  
3705 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
3706 ACT OF 2005  
3707  
3708

3709  
3710 POLICY GOVERNING CAPITAL PROJECTS

3711  
3712 THE RECTOR AND VISITORS OF  
3713 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA  
3714 POLICY GOVERNING CAPITAL PROJECTS  
3715

3716 I. PREAMBLE.

3717 The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter  
3718 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the  
3719 College of William & Mary in Virginia may be delegated the authority to establish its own system for  
3720 undertaking the implementation of its capital projects. In general, status as a Covered Institution is  
3721 designed to replace the post-authorization system of reviews, approvals, policies and procedures carried  
3722 out by a variety of central State agencies, and also the traditional pre-authorization approval process  
3723 for projects funded entirely with non-general funds and without any proceeds from State Tax Supported  
3724 Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be  
3725 governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together  
3726 with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the  
3727 Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods,  
3728 Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the  
3729 adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state  
3730 general fund appropriation, State Tax Supported Debt, or funding from other sources.

3731 This Policy is intended to encompass and implement the authority that may be granted to the College  
3732 pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant  
3733 to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the  
3734 Act and the College's Enabling Legislation, are not affected by this Policy.

3735 II. DEFINITIONS.

3736 As used in this policy, the following terms shall have the following meanings, unless the context  
3737 requires otherwise:

3738 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
3739 Chapter 4.10 of Title 23 of the Code of Virginia.

3740 "Board of Visitors" or "Board" means the Rector and Visitors of the College of William & Mary in  
3741 Virginia.

3742 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting  
3743 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

3744 "Capital Professional Services" means professional engineering, architecture, land surveying and  
3745 landscape architecture services related to capital projects.

3746 "Capital project(s)" means the acquisition of any interest in land, including improvements on the  
3747 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital  
3748 Leases.

3749 "College" means the College of William & Mary in Virginia, state agency 204, and the Virginia

3750 *Institute of Marine Science, state agency 268.*

3751 *"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a*  
 3752 *public institution of higher education of the Commonwealth of Virginia that has entered into a*  
 3753 *management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the*  
 3754 *Act.*

3755 *"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of*  
 3756 *Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and*  
 3757 *missions of the individual public institutions of higher education of the Commonwealth, and as provided*  
 3758 *in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3.*

3759 *"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on*  
 3760 *the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing*  
 3761 *\$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

3762 *"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section*  
 3763 *9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from*  
 3764 *general government funds, as defined in the December 20, 2004 Report to the Governor and General*  
 3765 *Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

### 3766 *III. SCOPE OF POLICY.*

3767 *This Policy applies to the planning and budget development for capital projects, capital project*  
 3768 *authorization, and the implementation of capital projects, whether funded by a general fund*  
 3769 *appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other*  
 3770 *sources.*

3771 *This Policy provides guidance for 1) the process for developing one or more capital project*  
 3772 *programs for the College, 2) authorization of new capital projects, 3) procurement of Capital*  
 3773 *Professional Services and construction services, 4) design reviews and code approvals for capital*  
 3774 *projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land*  
 3775 *acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting*  
 3776 *requirements.*

### 3777 *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

3778 *The Board of Visitors of the College shall at all times be fully and ultimately accountable for the*  
 3779 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
 3780 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*  
 3781 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*  
 3782 *the duties and responsibilities set forth in this Policy to a person or persons within the College, who,*  
 3783 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
 3784 *implementation of those duties and responsibilities pursuant to the College's usual delegation policies*  
 3785 *and procedures.*

### 3786 *V. CAPITAL PROGRAM.*

3787 *The President shall adopt a system for developing one or more capital project programs that defines*  
 3788 *or define the capital needs of the College for a given period of time consistent with the College's*  
 3789 *published Master Plan. This process may or may not mirror the Commonwealth's requirements for*  
 3790 *capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major*  
 3791 *Capital Projects that are to be funded entirely or in part by a general fund appropriation of the*  
 3792 *General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's*  
 3793 *requirements for capital plans. The Board may approve amendments to the program for Major Capital*  
 3794 *Projects annually or more often if circumstances warrant.*

3795 *It shall be College policy that each capital project program shall meet the College's mission and*  
 3796 *institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College*  
 3797 *policy that each capital project shall be of a size and scope to provide for the defined program needs,*  
 3798 *designed in accordance with all applicable building codes and handicapped accessibility standards as*  
 3799 *well as the College's design guidelines and standards, and costed to reflect current costs and escalated*  
 3800 *to the mid-point of anticipated construction.*

### 3801 *VI. AUTHORIZATION OF CAPITAL PROJECTS*

3802 *The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its*  
 3803 *size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for*  
 3804 *approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that*  
 3805 *are to be funded entirely or in part by a general fund appropriation of the General Assembly or*  
 3806 *proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those*  
 3807 *pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the*  
 3808 *State's process for capital budget requests.*

3809 *It shall be the policy of the College that the implementation of capital projects shall be carried out*  
 3810 *so that the capital project as completed is the capital project approved by the Board for Major Capital*  
 3811 *Projects and according to the procedures adopted by the President, acting through his designee, for all*

3812 *other capital projects. The President shall ensure strict adherence to this requirement.*

3813 *Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond*  
 3814 *the plans and justifications that were the basis for the capital project's approval, either before or during*  
 3815 *construction, unless approved in advance as described above. Minor changes shall be permissible if*  
 3816 *they are determined by the President, acting through his designee, to be justified.*

3817 *Major Capital Projects may be submitted for Board of Visitors authorization at any time but must*  
 3818 *include a statement of urgency if not part of the approved Major Capital Project program.*

3819 **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION**  
 3820 **SERVICES.**

3821 *It shall be the policy of the College that procurements shall result in the purchase of high quality*  
 3822 *services and construction at reasonable prices and shall be consistent with the Policy Governing the*  
 3823 *Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials*  
 3824 *adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and*  
 3825 *Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed*  
 3826 *to:*

3827 *Seeking competition to the maximum practical degree, taking into account the size of the anticipated*  
 3828 *procurement, the term of the resulting contract and the likely extent of competition;*

3829 *Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the*  
 3830 *appearance of any impropriety prohibited by State law or College policy;*

3831 *Making procurement rules clear in advance of any competition;*

3832 *Providing access to the College's business to all qualified vendors, firms and contractors, with no*  
 3833 *potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage*  
 3834 *in cooperative procurements and to meet special needs of the College;*

3835 *Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against*  
 3836 *employees or applicants because of race, religion, color, sex, national origin, age, disability or other*  
 3837 *basis prohibited by State law except where there is a bona fide occupational qualification reasonably*  
 3838 *necessary to the contractor's normal operations;*

3839 *Providing for a non-discriminatory procurement process, and including appropriate and lawful*  
 3840 *provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small*  
 3841 *businesses and to promote and encourage a diversity of suppliers.*

3842 *The President, acting through his designee, is authorized to develop implementing procedures for the*  
 3843 *procurement of Capital Professional Services and construction services at the College. The procedures*  
 3844 *shall implement this Policy and provide for:*

3845 *A system of competitive negotiation for Capital Professional Services, including a procedure for*  
 3846 *expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,*  
 3847 *and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of*  
 3848 *Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

3849 *A prequalification procedure for contractors or products;*

3850 *A procedure for special construction contracting methods, including but not limited to design-build*  
 3851 *and construction management contracts; and*

3852 *A prompt payment procedure.*

3853 *The College also may enter into cooperative arrangements with other private or public health or*  
 3854 *educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,*  
 3855 *in the judgment of the College, the purposes of this Policy will be furthered.*

3856 **VIII. DESIGN REVIEWS AND CODE APPROVALS.**

3857 *The Board of Visitors shall review the design of all Major Capital Projects and shall provide final*  
 3858 *Major Capital Project authorization based on the size, scope and cost estimate provided with the*  
 3859 *design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall*  
 3860 *be required. For all capital projects other than Major Capital Projects, the President, acting through*  
 3861 *his designee, shall adopt procedures for design review and project authorization based on the size,*  
 3862 *scope and cost estimate provided with the design. It shall be the College's policy that all capital*  
 3863 *projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide*  
 3864 *Building Code ("VUSBC") standards and the applicable accessibility code.*

3865 *The President shall designate a Building Official responsible for building code compliance by either*  
 3866 *(i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the*  
 3867 *Department of General Services, Division of Engineering and Buildings, to perform the Building Official*  
 3868 *function. If option (i) is selected, the individual hired as the College Building Official shall be a*  
 3869 *full-time employee, a registered professional architect or engineer, and certified by the Department of*  
 3870 *Housing and Community Development to perform this Building Official function. The College Building*  
 3871 *Official shall issue building permits for each capital project required by the VUSBC to have a building*  
 3872 *permit, and shall determine the suitability for occupancy of, and shall issue certifications for building*

3873 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification,  
 3874 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital  
 3875 project and that such capital project has been inspected by the State Fire Marshal or his designee.  
 3876 When serving as the College Building Official, such individual shall organizationally report directly and  
 3877 exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill  
 3878 the code review requirement by maintaining a review unit supported by resources and staff who are  
 3879 certified by the Department of Housing and Community Development in accordance with § 36-137 of the  
 3880 Code of Virginia for such purpose and who shall review plans, specifications and documents for  
 3881 compliance with building codes and standards and perform required inspections of work in progress and  
 3882 the completed capital project. No individual licensed professional architect or engineer hired or  
 3883 contracted with to perform these functions shall also perform other building code-related design,  
 3884 construction, facilities-related project management or facilities management functions for the College on  
 3885 the same capital project.

3886 **IX. ENVIRONMENTAL IMPACT REPORTS.**

3887 It shall be the policy of the College to assess the environmental, historic preservation, and  
 3888 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts  
 3889 to the extent practicable. The College shall develop a procedure for the preparation and approval of  
 3890 environmental impact reports for capital projects, in accordance with State environmental, historic  
 3891 preservation, and conservation requirements generally applicable to capital projects otherwise meeting  
 3892 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of  
 3893 \$300,000 or more.

3894 **X. BUILDING DEMOLITIONS.**

3895 It shall be the policy of the College to consider the environmental and historical aspects of any  
 3896 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.  
 3897 The College shall develop a procedure for the preparation and review of demolition requests, including  
 3898 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review  
 3899 Board in accordance with State historic preservation requirements generally applicable to capital  
 3900 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding  
 3901 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported  
 3902 Debt, general laws applicable to State owned property shall apply.

3903 **XI. BUILDING OR LAND ACQUISITIONS.**

3904 It is the policy of the College that capital projects involving building or land acquisition shall be  
 3905 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real  
 3906 property. The President, acting through his designee, shall ensure that the project management system  
 3907 implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters  
 3908 relating to the acquisition of buildings and land as any prudent purchaser would perform to the end  
 3909 that any building or land acquired by the College shall be suitable for its intended purpose, that the  
 3910 acquisition can be made without substantial risk of liability to the College and that the cost of the real  
 3911 property to be acquired, together with any contemplated development thereof, shall be such that  
 3912 compliance with the provisions of Section VI of this Policy is achieved. In addition, the President,  
 3913 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following  
 3914 specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

3915 **A. Environmental and Land Use Considerations.**

3916 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition.  
 3917 Such cooperation shall include but not be limited to furnishing any information that the locality may  
 3918 reasonably request and reviewing any requests by the locality with regard to any such acquisition. The  
 3919 College shall consider the zoning and comprehensive plan designation by the locality of the building or  
 3920 land and surrounding parcels, as well as any designation by State or federal agencies of historically or  
 3921 archeologically significant areas on the land. Nothing herein shall be construed as requiring the  
 3922 College to comply with local zoning laws and ordinances.

3923 **B. Infrastructure and Site Condition.**

3924 The President, acting through his designee, shall ensure that, in the case of capital projects involving  
 3925 the acquisition of buildings or land, the project management systems implemented under Section XIII  
 3926 below provide for a review of the following matters prior to acquisition of the building or land: that any  
 3927 land can be developed for its intended purpose without extraordinary cost; that an environmental  
 3928 engineer has been engaged by the College to provide an assessment of any environmental conditions on  
 3929 the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the  
 3930 building or land; that utilities and other services to the land are adequate or can reasonably be  
 3931 provided or have been provided in the case of building acquisitions; and that the condition and grade of  
 3932 the soils have been examined to determine if any conditions exist that would require extraordinary site  
 3933 work or foundation systems.

3934 **C. Title and Survey.**

3935 A survey shall be prepared for any real property acquired, and an examination of title to the real  
 3936 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title  
 3937 insurance shall be procured from a title insurance company authorized to do business in the  
 3938 Commonwealth. Based upon the survey and title examination or report, the President, acting through  
 3939 his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed  
 3940 to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements  
 3941 or other matters that may have a significant adverse effect upon the College's ability to own, occupy,  
 3942 convey or develop the real property.

3943 D. Appraisal.  
 3944 An appraisal shall be conducted of the real property to be acquired to determine its fair market  
 3945 value and the consistency of the fair market value with the price agreed upon by the College.

3946 XII. BUILDING OR LAND DISPOSITIONS.  
 3947 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or  
 3948 buildings, the acquisition or construction of which was funded entirely or in part by a general fund  
 3949 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both  
 3950 Board of Visitors approval and other approvals in accordance with general law applicable to  
 3951 State-owned property and with the College's Enabling Legislation.

3952 XIII. PROJECT MANAGEMENT SYSTEMS.  
 3953 The President, acting through his designee, shall implement one or more systems for the management  
 3954 of capital projects for the College. The systems may include the delegation of project management  
 3955 authority to appropriate College officials, including a grant of authority to such officials to engage in  
 3956 further delegation of authority as the President deems appropriate.

3957 The project management systems for capital projects shall be designed to ensure that such projects  
 3958 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely  
 3959 related subjects such as selection of architects or policies applicable to College buildings and grounds.

3960 The project management systems may include one or more reporting systems applicable to capital  
 3961 projects whereby College officials responsible for the management of such projects provide appropriate  
 3962 and timely reports to the President on the status of such projects during construction.

3963 XIV. REPORTING REQUIREMENTS.  
 3964 In addition to complying with any internal reporting systems contained in the College's project  
 3965 management systems, as described in Section XIII above, the College shall comply with State reporting  
 3966 requirements for those Major Capital Projects funded entirely or in part by a general fund  
 3967 appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project  
 3968 constructs improvements on land, or renovates property, that originally was acquired or constructed in  
 3969 whole or in part with a general fund appropriation for that purpose or proceeds from State Tax  
 3970 Supported Debt, and such improvements or renovations are undertaken entirely with funds not  
 3971 appropriated by the General Assembly and, if the cost of such improvements or renovations is  
 3972 reasonably expected to exceed two million dollars, the decision to undertake such improvements or  
 3973 renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine,  
 3974 the President, acting through his designee, shall report to the Department of General Services on the  
 3975 status of such capital projects at the initiation of the project, prior to the commencement of  
 3976 construction, and at the time of acceptance of any such capital project.

3977  
 3978 EXHIBIT H  
 3979  
 3980 MANAGEMENT AGREEMENT  
 3981 BETWEEN  
 3982 THE COMMONWEALTH OF VIRGINIA  
 3983 AND  
 3984 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA  
 3985 PURSUANT TO  
 3986 THE RESTRUCTURED HIGHER EDUCATION  
 3987 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
 3988 ACT OF 2005  
 3989  
 3990  
 3991 POLICY GOVERNING  
 3992 LEASES OF REAL PROPERTY  
 3993  
 3994 THE RECTOR AND VISITORS OF  
 3995 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

**POLICY GOVERNING LEASES OF REAL PROPERTY**

3996

3997 **I. PREAMBLE.**

3998 *In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases*  
 3999 *of Property for certain leases entered into by the College of William & Mary in Virginia, which was*  
 4000 *amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital*  
 4001 *Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act*  
 4002 *(the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon*  
 4003 *becoming a Covered Institution, the College may have the authority to establish its own system for the*  
 4004 *leasing of real property. The College's system for implementing this authority is to be governed by*  
 4005 *policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted*  
 4006 *Board of Visitors policies regarding Leases of real property entered into by the College.*

4007 *This Policy is intended to cover the authority that may be granted to the College pursuant to*  
 4008 *Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the*  
 4009 *Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act*  
 4010 *and the College's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this*  
 4011 *Policy.*

4012 **II. DEFINITIONS.**

4013 *The following words and terms, when used in this Policy, shall have the following meaning unless*  
 4014 *the context clearly indicates otherwise:*

4015 *"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*  
 4016 *Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*

4017 *"Board of Visitors" means the Rector and Visitors of the College of William & Mary in Virginia.*

4018 *"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting*  
 4019 *Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

4020 *"College" means the College of William & Mary in Virginia, state agency 204, and the Virginia*  
 4021 *Institute of Marine Science, state agency 268.*

4022 *"Covered Institution" means a public institution of higher education of the Commonwealth of*  
 4023 *Virginia that has entered into a Management Agreement with the Commonwealth to be governed by*  
 4024 *Subchapter 3 of the Act.*

4025 *"Expense Lease" means an Operating Lease of real property under the control of another entity to*  
 4026 *the College.*

4027 *"Income Lease" means an Operating Lease of real property under the control of the College to*  
 4028 *another entity.*

4029 *"Lease" or "Leases" means any type of lease involving real property.*

4030 *"Operating Lease" means any lease involving real property, or improvements thereon, that is not a*  
 4031 *Capital Lease.*

4032 **III. SCOPE OF POLICY.**

4033 *This Policy provides guidance for the implementation of all College Leases.*

4034 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

4035 *The Board of Visitors of the College shall at all times be fully and ultimately accountable for the*  
 4036 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
 4037 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*  
 4038 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*  
 4039 *the duties and responsibilities set forth in this Policy to a person or persons within the College, who,*  
 4040 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
 4041 *implementation of those duties and responsibilities pursuant to the College's usual delegation policies*  
 4042 *and procedures.*

4043 **V. REQUIREMENTS FOR LEASES.**4044 **A. Factors to Be Considered When Entering into Leases.**

4045 *All Leases shall be for a purpose consistent with the mission of the College. The decision to enter*  
 4046 *into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy,*  
 4047 *consideration of all costs of occupancy, and a determination that the use of the property to be leased is*  
 4048 *necessary and is efficiently planned. Leases shall also conform to the space planning procedures that*  
 4049 *may be adopted by the President, acting through his designee, to ensure that the plan for the space to*  
 4050 *be leased is consistent with the purpose for which the space is intended.*

4051 **B. Competition to Be Sought to Maximum Practicable Degree.**

4052 *Competition shall be sought to the maximum practicable degree for all Leases. The President, acting*  
 4053 *through his designee, is authorized to ensure that Leases are procured through competition to the*  
 4054 *maximum degree practicable and to determine when, under guidelines that may be developed and*  
 4055 *adopted by the President, acting through his designee, it is impractical to procure Leases through*  
 4056 *competition.*

4057 **C. Approval of Form of Lease Required.**

4058 *The form of Leases entered into by the College shall be approved by the College's legal counsel.*

4059 *D. Execution of Leases.*

4060 *All Leases entered into by the College shall be executed only by those College officers or persons*  
4061 *authorized by the President or as may subsequently be authorized by the Board of Visitors, and subject*  
4062 *to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the*  
4063 *College's Policy Governing Capital Projects adopted by the Board as part of the Management*  
4064 *Agreement between the Commonwealth and the College, no other College approval shall be required for*  
4065 *leases or leasing, nor state approval required except in the case of leases of real property as may be*  
4066 *governed by general state law in accordance with § 23-38.109 and § 23-38.112 of the Act.*

4067 *E. Capital Leases.*

4068 *The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization*  
4069 *process included in the Policy Governing Capital Projects adopted by the Board as part of the*  
4070 *Management Agreement between the Commonwealth and the College.*

4071 *F. Compliance with Applicable Law.*

4072 *All Leases of real property by the College shall be consistent with any requirements of law that are*  
4073 *contained in the Act or are otherwise applicable.*

4074 *G. Certification of Occupancy.*

4075 *All real property covered by an Expense Lease or leased by the College under a Capital Lease shall*  
4076 *be certified for occupancy by the appropriate public body or building official.*

4077

4078 *EXHIBIT I*

4079

4080 *MANAGEMENT AGREEMENT*

4081

*BETWEEN*

4082

*THE COMMONWEALTH OF VIRGINIA*

4083

*AND*

4084

*THE COLLEGE OF WILLIAM & MARY IN VIRGINIA*

4085

*PURSUANT TO*

4086

*THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT*  
4087 *OF 2005*

4088

4089

*POLICY GOVERNING*

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*INFORMATION TECHNOLOGY*

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4093

4094

*THE RECTOR AND VISITORS OF*

4095

*THE COLLEGE OF WILLIAM & MARY IN VIRGINIA*

4096

*POLICY GOVERNING INFORMATION TECHNOLOGY*

4097

*I. PREAMBLE.*

4098

4099

*The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter*  
4100 *4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions*  
4101 *of higher education in the Commonwealth of Virginia that have entered into a Management Agreement*  
4102 *with the Commonwealth "may be exempt from the provisions governing the Virginia Information*  
4103 *Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the*  
4104 *Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title*  
4105 *2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such]*  
4106 *institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the*  
4107 *Code of Virginia. This Information Technology Policy shall become effective upon the effective date of*  
4108 *a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between*  
4109 *the Commonwealth and the College of William & Mary in Virginia that incorporates this Policy.*

4109

*The Board of Visitors of the College is authorized to adopt this Information Technology Policy*  
4110 *pursuant to § 23-38.111 of the Code of Virginia.*

4111

*II. DEFINITIONS.*

4112

*As used in this Information Technology Policy, the following terms have the following meanings,*  
4113 *unless the context requires otherwise:*

4114

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*  
4115 *Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*

4116

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William &*  
4117 *Mary in Virginia.*

4118

*"College" means the College of William & Mary in Virginia, State Agency 204, and the Virginia*

4119 *Institute of Marine Science, State Agency 268.*

4120 *"Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the*  
 4121 *Code of Virginia as it currently exists and from time to time may be amended.*

4122 *"Major information technology project" or "major IT project" shall have the same meaning as set*  
 4123 *forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.*

4124 *"Policy" means this Information Technology Policy adopted by the Board of Visitors.*

4125 *"State Chief Information Officer" or "State CIO" means the Chief Information Officer of the*  
 4126 *Commonwealth of Virginia.*

4127 *III. SCOPE OF POLICY.*

4128 *This Policy is intended to cover and implement the authority that may be granted to the College*  
 4129 *pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect any other*  
 4130 *powers and authorities granted to the College pursuant to the Appropriation Act and the Code of*  
 4131 *Virginia, including other provisions of the Act or the College's enabling legislation as that term is*  
 4132 *defined in § 23-38.89 of the Act.*

4133 *This Policy shall govern the College's information technology strategic planning, expenditure*  
 4134 *reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and*  
 4135 *audits conducted within, by, or on behalf of the College. Upon the effective date of a Management*  
 4136 *Agreement between the Commonwealth and the College, as authorized by subsection D of § 23-38.88*  
 4137 *and § 23-38.111, therefore, the College shall be exempt from those provisions of the Code of Virginia,*  
 4138 *including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies*  
 4139 *Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24*  
 4140 *of Title 2.2 of the Code of Virginia, that otherwise would govern the College's information technology*  
 4141 *strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture,*  
 4142 *ongoing operations, security, and audits conducted within, by, or on behalf of the College; provided,*  
 4143 *however, that the College still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et seq.)*  
 4144 *(Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information*  
 4145 *Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to*  
 4146 *public institutions of higher education of the Commonwealth and that do not govern information*  
 4147 *technology strategic planning, expenditure reporting, budgeting, project management, infrastructure,*  
 4148 *architecture, ongoing operations, security, and audits within, by, or on behalf of the College.*

4149 *The procurement of information technology and telecommunications goods and services, including*  
 4150 *automated data processing hardware and software, shall be governed by the Policy Governing the*  
 4151 *Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials*  
 4152 *approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and*  
 4153 *Construction that are incorporated in and attached to that Policy.*

4154 *IV. GENERAL PROVISIONS.*

4155 *A. Board of Visitors Accountability and Delegation of Authority.*

4156 *The Board of Visitors of the College shall at all times be fully and ultimately accountable for the*  
 4157 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
 4158 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*  
 4159 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*  
 4160 *the duties and responsibilities set forth in this Policy to a person or persons within the College, who,*  
 4161 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
 4162 *implementation of those duties and responsibilities pursuant to the College's usual delegation policies*  
 4163 *and procedures.*

4164 *B. Strategic Planning.*

4165 *The President shall be responsible for overall IT strategic planning at the College, which shall be*  
 4166 *linked to and in support of the College's overall strategic plan.*

4167 *At least 45 days prior to each fiscal year, the President shall make available the College's IT*  
 4168 *strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to*  
 4169 *the consistency of the College's plan with the intent of the currently published overall five-year IT*  
 4170 *strategic plan for the Commonwealth developed by the State CIO pursuant to § 2.2-2007 of the Code of*  
 4171 *Virginia and into which the College's plan is to be incorporated.*

4172 *C. Expenditure Reporting and Budgeting .*

4173 *The President shall approve and be responsible for overall IT budgeting and investments at the*  
 4174 *College. The College's IT budget and investments shall be linked to and in support of the College's IT*  
 4175 *strategic plan, and shall be consistent with general College policies, the Board-approved annual*  
 4176 *operating budget, and other Board approvals for certain procurements.*

4177 *By October 1 of each year, the President shall make available to the State CIO and the Information*  
 4178 *Technology Investment Board a report on the previous fiscal year's IT expenditures.*

4179 *The College shall be specifically exempt from:*

4180 *Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget*

4181 requests) as it currently exists and from time to time may be amended;  
 4182 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as  
 4183 they currently exist and from time to time may be amended; and  
 4184 any other substantially similar provision of the Code of Virginia governing IT expenditure reporting  
 4185 and budgeting, as it currently exists and from time to time may be amended.

4186 *D. Project Management.*

4187 Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies,  
 4188 standards, and guidelines developed by the Commonwealth or those based upon industry best practices  
 4189 for project management as defined by leading IT consulting firms, leading software development firms,  
 4190 or a nationally-recognized project management association, appropriately tailored to the specific  
 4191 circumstances of the College. Copies of the Board's policies, standards, and guidelines shall be made  
 4192 available to the Information Technology Investment Board.

4193 The President, acting through his designee, shall oversee the management of all College IT projects.  
 4194 IT projects may include, but are not limited to, upgrades to network infrastructure, provision of  
 4195 technology to support research, database development, implementation of new applications, and  
 4196 development of IT services for students, faculty, staff, and patients. Day-to-day management of projects  
 4197 shall be the responsibility of appointed project directors and shall be in accord with the project  
 4198 management policies, standards, and guidelines adopted by the Board, as amended and revised from  
 4199 time to time.

4200 On a quarterly basis, the President, acting through his designee, shall report to the Information  
 4201 Technology Investment Board on the budget, schedule, and overall status of the College's major IT  
 4202 projects. This requirement shall not apply to research projects, research initiatives, or instructional  
 4203 programs.

4204 The President shall be responsible for decisions to substantially alter a project's scope, budget, or  
 4205 schedule after initial approval.

4206 The College shall be specifically exempt from:

4207 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project  
 4208 management) as it currently exists and from time to time may be amended;

4209 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management)  
 4210 as they currently exist and from time to time may be amended; and

4211 any other substantially similar provision of the Code of Virginia governing IT project management,  
 4212 as it currently exists or from time to time may be amended.

4213 The State CIO and the Information Technology Investment Board shall continue to have the authority  
 4214 regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of  
 4215 § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall  
 4216 continue to provide the College with reasonable notice of, and a reasonable opportunity to correct, any  
 4217 identified problems before a project is terminated.

4218 *E. Infrastructure, Architecture, Ongoing Operations, and Security.*

4219 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines  
 4220 related to IT infrastructure, architecture, ongoing operations, and security developed by the  
 4221 Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific  
 4222 circumstances of the College. Copies of the policies shall be made available to the Information  
 4223 Technology Investment Board.

4224 The President, acting through his designee, shall be responsible for implementing such policies,  
 4225 standards, and guidelines adopted by the Board, as amended and revised from time to time.

4226 For purposes of implementing this Policy, the President shall appoint an existing College employee  
 4227 to serve as a liaison between the College and the State CIO.

4228 *F. Audits.*

4229 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines  
 4230 developed by the Commonwealth or those based upon industry best practices for project auditing as  
 4231 defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing  
 4232 association, appropriately tailored to the specific circumstances of the College, which provide for  
 4233 Independent Validation and Verification ("IV&V") of the College's major IT projects. Copies of the  
 4234 policies, standards, and guidelines, as amended and revised from time to time, shall be made available  
 4235 to the Information Technology Investment Board.

4236 Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure,  
 4237 architecture, ongoing operations, and security, shall also be the responsibility of the College's Internal  
 4238 Audit Department and the Auditor of Public Accounts.

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

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

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

I. PREAMBLE.

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

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

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

II. DEFINITIONS.

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

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

"Agreement" means "Management Agreement".

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

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

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

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

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

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

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

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

"Services" as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of

4304 equipment, materials and supplies, and shall include both professional services, which include the  
 4305 practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and  
 4306 nonprofessional services, which include any service not specifically identified as professional services.

4307 "Surplus materials" means personal property including, but not limited to, materials, supplies,  
 4308 equipment and recyclable items, that are determined to be surplus by the College.

### 4309 III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

4310 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
 4311 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
 4312 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
 4313 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
 4314 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,  
 4315 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
 4316 implementation of those duties and responsibilities pursuant to the College's usual delegation policies  
 4317 and procedures.

### 4318 IV. GENERAL PROVISIONS.

#### 4319 A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement 4320 Policies.

4321 The College has had decentralization and pilot program autonomy in many procurement functions  
 4322 and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy  
 4323 previously granted to the College in Item 330 E of the 1994 Appropriation Act. This Policy therefore is  
 4324 adopted by the Board of Visitors to enable the College to develop a procurement system, as well as a  
 4325 surplus materials disposition system. Any College electronic procurement system shall integrate or  
 4326 interface with the Commonwealth's electronic procurement system.

4327 This Policy shall be effective on the Effective Date of the College's initial Management Agreement  
 4328 with the Commonwealth. The implementing policies and procedures adopted by the President to  
 4329 implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors  
 4330 affecting procurements at the College, including policies regarding the nature and amounts of  
 4331 procurements that may be undertaken without the approval of the Board of Visitors, or of the President.

#### 4332 B. Scope and Purpose of College Procurement Policies.

4333 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be  
 4334 the policy of the College that procurements conducted by the College result in the purchase of high  
 4335 quality goods and services at reasonable prices, and that the College be free, to the maximum extent  
 4336 permitted by law and this Policy, from constraining policies that hinder the ability of the College to do  
 4337 business in a competitive environment. This Policy, together with the Rules Governing Procurement of  
 4338 Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all  
 4339 procurements undertaken by the College, regardless of the source of funds.

#### 4340 C. Collaboration, Communication, and Cooperation with the Commonwealth.

4341 The College is committed to developing, maintaining, and sustaining collaboration, communication,  
 4342 and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly  
 4343 with the Offices of the Secretaries of Administration and Technology, the Department of General  
 4344 Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals  
 4345 common to both the College and the Commonwealth and the mechanisms by which such objectives and  
 4346 goals may be jointly pursued and achieved are among the desired outcomes of such collaboration,  
 4347 communication, and cooperation.

#### 4348 D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.

4349 The College is committed to maximizing its internal operational efficiencies, economies of scale  
 4350 among institutions of higher education, and the leveraged buying power of the Commonwealth as a  
 4351 whole.

4352 Consistent with this commitment, the College:

4353 i) may purchase from and participate in all statewide contracts for goods and services, including  
 4354 information technology goods and services, except that the College shall purchase from and participate  
 4355 in contracts for communications services and telecommunications facilities entered into by the Virginia  
 4356 Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an exception is  
 4357 provided in the Appropriation Act or by other law, and provided that orders not placed through  
 4358 statewide contracts shall be processed directly or by integration or interface through the  
 4359 Commonwealth's electronic procurement system;

4360 ii) shall use directly or by integration or interface the Commonwealth's electronic procurement  
 4361 system; and

4362 iii) shall adopt a small, woman-owned, and minority-owned ("SWAM") business program that is  
 4363 consistent with the Commonwealth's SWAM program.

#### 4364 E. Implementation.

4365 To effect its implementation under the Act, and if the College remains in continued substantial  
 4366 compliance with the terms and conditions of this Management Agreement with the Commonwealth  
 4367 pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the College's  
 4368 procurement of goods, services, insurance, and construction, and the disposition of surplus materials  
 4369 shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2,  
 4370 except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information  
 4371 Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the Information Technology  
 4372 Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency  
 4373 requirements regarding disposition of surplus materials and distribution of proceeds from the sale or  
 4374 recycling of surplus materials in §§ 2.2-1124 and 1125; the requirement to purchase from the  
 4375 Department for the Blind and Vision Impaired ("VIB") (§ 2.2-1117); and any other state statutes, rules,  
 4376 regulations or requirements relating to the procurement of goods, services, insurance, and construction,  
 4377 including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the  
 4378 duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department  
 4379 of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review  
 4380 and the oversight by the Division of Engineering and Buildings of the Virginia Department of General  
 4381 Services of contracts for the construction of College capital projects and construction-related  
 4382 professional services (§ 2.2-1132).

#### 4383 V. COLLEGE PROCUREMENT POLICIES.

##### 4384 A. General Competitive Principles.

4385 In connection with College procurements and the processes leading to award of contracts for goods,  
 4386 services, insurance, and construction, the College is committed to:

4387 seeking competition to the maximum practical degree, taking into account the size of the anticipated  
 4388 procurement, the term of the resulting contract and the likely extent of competition;

4389 conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or  
 4390 the appearance of any impropriety;

4391 making procurement rules clear in advance of any competition;

4392 providing access to the College's business to all qualified vendors, firms and contractors, with no  
 4393 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage  
 4394 in cooperative procurements and to meet special needs of the College;

4395 ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular  
 4396 vendor; and

4397 providing for the free exchange of information between the College, vendors, firms or contractors  
 4398 concerning the goods or services sought and offered while preserving the confidentiality of proprietary  
 4399 information.

##### 4400 B. Access to Records.

4401 Procurement records shall be available to citizens or to interested persons, firms or corporations in  
 4402 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et  
 4403 seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to  
 4404 § 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia  
 4405 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.

##### 4406 C. Cooperative Procurements and Alliances.

4407 In circumstances where the College determines and documents that statewide contracts for goods and  
 4408 services, including information technology and telecommunications goods and services, do not provide  
 4409 goods and services to the College that meet its business goals and objectives, the College is authorized  
 4410 to participate in cooperative procurements with other public or private organizations or entities,  
 4411 including other educational institutions, public-private partnerships, public bodies, charitable  
 4412 organizations, health care provider alliances and purchasing organizations, so long as the resulting  
 4413 contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing  
 4414 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1  
 4415 and the purposes of this Policy are furthered. In the event the College engages in a cooperative  
 4416 contract with a private organization or public-private partnership and the contract was not competitively  
 4417 procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods,  
 4418 Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by  
 4419 other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the  
 4420 above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's  
 4421 electronic procurement system, including the requirement for payment of applicable fees. By October 1  
 4422 of each year, the President, or his designee, shall make available to the Secretaries of Administration  
 4423 and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts  
 4424 a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.

##### 4425 D. Training; Ethics in Contracting.

4426 The President, acting through his designee, shall take all necessary and reasonable steps to assure

4427 (i) that all College officials responsible for and engaged in procurements authorized by the Act and this  
 4428 Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public  
 4429 Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter  
 4430 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any  
 4431 procedures adopted by the President to implement this Policy are responsible for and engaged in such  
 4432 procurements, and (iii) that compliance with the Act and this Policy are achieved.

4433 The College shall maintain an ongoing program to provide professional development opportunities to  
 4434 its buying staff and to provide methods training to internal staff who are engaged in placing  
 4435 decentralized small purchase transactions.

4436 E. Ethics and College Procurements.

4437 In implementing the authority conferred by this Policy, the personnel administering any procurement  
 4438 shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting  
 4439 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title  
 4440 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31  
 4441 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et  
 4442 seq.) of Chapter 12 of Title 18.2.

4443 VI. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.

4444 The policy and procedures for disposal for surplus materials shall provide for the sale,  
 4445 environmentally-appropriate disposal, or recycling of surplus materials by the College and the retention  
 4446 of the resulting proceeds by the College.

4447 VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND  
 4448 PROCEDURES.

4449 The President shall adopt one or more comprehensive sets of specific procurement policies and  
 4450 procedures for the College, which, in addition to the Rules, implement applicable provisions of law and  
 4451 this Policy. College procurements shall be carried out in accordance with this Policy, the Rules, and  
 4452 any implementing policies and procedures adopted by the College. The implementing policies and  
 4453 procedures (i) shall include the delegation of procurement authority by the Board to appropriate  
 4454 College officials who shall oversee College procurements of goods, services, insurance, and  
 4455 construction, including a grant of authority to such officials to engage in further delegation of authority  
 4456 as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set  
 4457 forth in Part V above.

4458 Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall  
 4459 become effective on the Effective Date of the College's initial Management Agreement with the  
 4460 Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the  
 4461 College on behalf of the College for goods, services, insurance, and construction. This Policy, the  
 4462 Rules, and any implementing policies and procedures adopted by the College shall not affect existing  
 4463 contracts already in effect.

4464 The Rules and College implementing policies and procedures for all College procurements of goods,  
 4465 services, insurance, and construction, and the disposition of surplus property shall be substantially  
 4466 consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education  
 4467 and their Vendors in their form as of the effective date of this Policy and as amended or changed in the  
 4468 future, and with College procedures specific to the Acquisition of Goods and Services. The Rules and  
 4469 College implementing policies and procedures shall implement a system of competitive negotiation, and  
 4470 competitive sealed bidding when appropriate, for goods, services, including professional services as  
 4471 defined in the Rules, insurance, and construction.

4472 VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

4473 A. Protests, Appeals and Debarment.

4474 The Rules and College implementing policies and procedures for procurements other than capital  
 4475 outlay shall include a process or processes for an administrative appeal by vendors, firms or  
 4476 contractors. Protests and appeals may challenge determinations of vendor, firm or contractor  
 4477 non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are  
 4478 filed within the times specified by the Rules. Remedies available shall be limited to reversal of the  
 4479 action challenged or, where a contract already being performed is declared void, compensation for the  
 4480 cost of performance up to the time of such declaration. The Rules and College implementing policies  
 4481 and procedures also may establish the basis and process for debarment of any vendor, firm or  
 4482 contractor.

4483 B. Prompt Payment of Contractors and Subcontractors.

4484 The Rules and College implementing policies and procedures shall include provisions related to  
 4485 prompt payment of outstanding invoices, which shall include payment of interest on properly-presented  
 4486 invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the  
 4487 lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The

4488 *payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or*  
 4489 *the date established by the contract. All contracts also shall require prompt payment of subcontractors*  
 4490 *by the general contractor, upon receipt of payment by the College.*

4491 *C. Types of Procurements.*

4492 *The Rules and College implementing policies and procedures shall implement a system of competitive*  
 4493 *negotiation for professional services, as defined in the Rules, and shall implement purchasing*  
 4494 *procedures developed to maximize competition given the size and duration of the contract, and the needs*  
 4495 *of the College. Such policies and procedures may include special provisions for procurements such as*  
 4496 *emergency procurements, sole source procurements, brand name procurements, small purchases,*  
 4497 *procurements in which only one qualified vendor responds, and others.*

4498 *D. Approval and Public Notice of Procurements.*

4499 *The Rules and College implementing policies and procedures shall provide for approval of*  
 4500 *solicitation documents by an authorized individual and for reasonable public notice of procurements,*  
 4501 *given the size and nature of the need and the applicability of any Virginia Freedom of Information Act*  
 4502 *exemption.*

4503 *E. Administration of Contracts.*

4504 *The Rules and College implementing policies and procedures shall contain provisions related to the*  
 4505 *administration of contracts, including contract claims, modifications, extensions and assignments.*

4506 *F. Non-Discrimination.*

4507 *The Rules and College implementing policies and procedures shall provide for a non-discriminatory*  
 4508 *procurement process that prohibits discrimination because of race, religion, color, sex or national origin*  
 4509 *of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate*  
 4510 *provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small*  
 4511 *businesses and to promote and encourage a diversity of suppliers.*

4512

4513

#### ATTACHMENT 1

4514

4515 *Rules Governing Procurement of Goods, Services, Insurance, and Construction*

4516 *by a Public Institution of Higher Education of the Commonwealth of Virginia*

4517 *Governed by Subchapter 3 of the*

4518 *Restructured Higher Education Financial and Administrative Operations Act,*

4519 *Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia*

4520 *In accordance with the provisions of the Restructured Higher Education Financial and*  
 4521 *Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of*  
 4522 *Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher*  
 4523 *education of the Commonwealth of Virginia that has entered into a Management Agreement with the*  
 4524 *Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing*  
 4525 *Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods,*  
 4526 *services, insurance, and construction by the Institution, excluding the University of Virginia Medical*  
 4527 *Center:*

4528 *§ 1. Purpose. - The purpose of these Rules is to enunciate the public policies pertaining to*  
 4529 *procurement of good, services, insurance, and construction by the Institution from nongovernmental*  
 4530 *sources, to include governmental procurement that may or may not result in monetary consideration for*  
 4531 *either party. These Rules shall apply whether the consideration is monetary or nonmonetary and*  
 4532 *regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

4533 *§ 2. Scope of Procurement Authority. - Subject to these Rules, and the Institution's continued*  
 4534 *substantial compliance with the terms and conditions of its Management Agreement with the*  
 4535 *Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the*  
 4536 *Institution shall have and shall be authorized to have and exercise all of the authority relating to*  
 4537 *procurement of goods, services, insurance, and construction, including but not limited to capital*  
 4538 *outlay-related procurement and information technology-related procurement, that Institutions are*  
 4539 *authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

4540 *§ 3. Competition is the Priority. - To the end that the Institution shall obtain high quality goods and*  
 4541 *services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial*  
 4542 *manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have*  
 4543 *access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the*  
 4544 *intent of the governing body of the Institution that competition be sought to the maximum feasible*  
 4545 *degree, that procurement procedures involve openness and administrative efficiency, that individual*  
 4546 *public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing*  
 4547 *contract awards be made clear in advance of the competition, that specifications reflect the procurement*  
 4548 *needs of the purchasing body rather than being drawn to favor a particular vendor, and that the*  
 4549 *purchaser and vendor freely exchange information concerning what is sought to be procured and what*

4550 is offered. The Institution may consider best value concepts when procuring goods and nonprofessional  
 4551 services, but not construction or professional services. Professional services will be procured using a  
 4552 qualification-based selection process. The criteria, factors, and basis for consideration of best value and  
 4553 the process for the consideration of best value shall be as stated in the procurement solicitation.

4554 § 4. Definitions. - As used in these Rules:

4555 "Affiliate" means an individual or business that controls, is controlled by, or is under common  
 4556 control with another individual or business. A person controls an entity if the person owns, directly or  
 4557 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition  
 4558 "voting security" means a security that (i) confers upon the holder the right to vote for the election of  
 4559 members of the board of directors or similar governing body of the business or (ii) is convertible into,  
 4560 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A  
 4561 general partnership interest shall be deemed to be a voting security.

4562 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,  
 4563 and various elements of required services that in total are optimal relative to the Institution's needs.

4564 "Business" means any type of corporation, partnership, limited liability company, association, or sole  
 4565 proprietorship operated for profit.

4566 "Competitive negotiation" is a method of contractor selection that includes the following elements:

4567 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be  
 4568 procured, specifying the factors that will be used in evaluating the proposal and containing or  
 4569 incorporating by reference the other applicable contractual terms and conditions, including any unique  
 4570 capabilities or qualifications that will be required of the contractor.

4571 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of  
 4572 proposals by publication in a newspaper or newspapers of general circulation in the area in which the  
 4573 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that  
 4574 can be reasonably anticipated to submit proposals in response to the particular request. Public notice  
 4575 also shall be published on the Department of General Services' central electronic procurement website  
 4576 and may be published on other appropriate websites. In addition, proposals may be solicited directly  
 4577 from potential contractors.

4578 3. a. Procurement of professional services. The procurement of professional services for capital  
 4579 projects shall be conducted using a qualification-based selection process. The Institution shall engage  
 4580 in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on  
 4581 the basis of initial responses and with emphasis on professional competence, to provide the required  
 4582 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to  
 4583 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed  
 4584 project, as well as alternative concepts. The Request for Proposal shall not, however, request that  
 4585 offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may  
 4586 discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and  
 4587 where appropriate, nonbinding estimates of price for services. Proprietary information from competing  
 4588 offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined  
 4589 in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all  
 4590 information developed in the selection process to this point, the Institution shall select in the order of  
 4591 preference two or more offerors whose professional qualifications and proposed services are deemed  
 4592 most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a  
 4593 contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair  
 4594 and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror  
 4595 ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and  
 4596 so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution  
 4597 determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror  
 4598 is clearly more highly qualified and suitable than the others under consideration, a contract may be  
 4599 negotiated and awarded to that offeror.

4600 A contract for architectural or professional engineering services relating to construction projects may  
 4601 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience  
 4602 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under  
 4603 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of  
 4604 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the  
 4605 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set  
 4606 in the Request for Proposal. Any unused amounts from any contract term may be carried forward.  
 4607 Competitive negotiations for such contracts may result in awards to more than one offeror provided the  
 4608 Request for Proposal stated the potential for a multi-vendor award. Multiphase professional services  
 4609 contracts satisfactory and advantageous to the Institution for environmental, location, design and  
 4610 inspection work regarding construction of infrastructure projects may be negotiated and awarded based

4611 on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier  
4612 phases is necessary to provide information critical to the negotiation of a fair and reasonable price for  
4613 succeeding phases. Prior to the procurement of any such contract, the Institution shall state the  
4614 anticipated intended total scope of the project and determine in writing that the nature of the work is  
4615 such that the best interests of such Institution require awarding the contract.

4616 b. Procurement of other than professional services. Selection shall be made of two or more offerors  
4617 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the  
4618 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
4619 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered,  
4620 but need not be the sole determining factor. After negotiations have been conducted with each offeror  
4621 so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and  
4622 shall award the contract to that offeror. When the terms and conditions of multiple awards are so  
4623 provided in the Request for Proposal, awards may be made to more than one offeror. Should the  
4624 Institution determine in writing and in its sole discretion that only one offeror has made the best  
4625 proposal, a contract may be negotiated and awarded to that offeror.

4626 "Competitive sealed bidding" is a method of contractor selection, other than for professional  
4627 services, which includes the following elements:

4628 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications  
4629 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided  
4630 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite  
4631 qualifications of potential contractors. When it is impractical to prepare initially a purchase description  
4632 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of  
4633 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been  
4634 qualified under the criteria set forth in the first solicitation.

4635 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by  
4636 publication on the Department of General Services' central electronic procurement website. Public  
4637 notice also may be published in a newspaper of general circulation or on other appropriate websites, or  
4638 both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations  
4639 shall include businesses selected from a list made available by the Department of Minority Business  
4640 Enterprise.

4641 3. Public opening and announcement of all bids received.

4642 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include  
4643 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria  
4644 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose,  
4645 which are helpful in determining acceptability.

4646 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of  
4647 multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

4648 "Construction" means building, altering, repairing, improving or demolishing any structure, building  
4649 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

4650 "Construction management contract" means a contract in which a party is retained by the owner to  
4651 coordinate and administer contracts for construction services for the benefit of the owner, and may also  
4652 include, if provided in the contract, the furnishing of construction services to the owner.

4653 "Covered Institution" or "Institution" means, on and after the effective date of the initial management  
4654 agreement with the Commonwealth of Virginia, a public institution of higher education of the  
4655 Commonwealth that has entered into a management agreement with the Commonwealth to be governed  
4656 by the provisions of Subchapter 3 of the Restructuring Act.

4657 "Design-build contract" means a contract between the Institution and another party in which the  
4658 party contracting with the Institution agrees to both design and build the structure, roadway or other  
4659 item specified in the contract.

4660 "Goods" means all material, equipment, supplies, and printing, including information technology and  
4661 telecommunications goods such as automated data processing hardware and software.

4662 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of  
4663 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or  
4664 delivery schedule for the goods, services or construction being procured.

4665 "Multiphase professional services contract" means a contract for the providing of professional  
4666 services where the total scope of work of the second or subsequent phase of the contract cannot be  
4667 specified without the results of the first or prior phase of the contract.

4668 "Nonprofessional services" means any services not specifically identified as professional services in  
4669 the definition of professional services and includes small construction projects valued not over  
4670 \$1,000,000; provided that subdivision 3a of the definition of "competitive negotiation" in this section  
4671 shall still apply to professional services for such small construction projects.

4672 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who,

4673 at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the  
 4674 sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured  
 4675 under the contract, and who at such time is eligible and qualified in all respects to perform that  
 4676 contract, and who would have been eligible and qualified to submit a bid or proposal had the contract  
 4677 been procured through competitive sealed bidding or competitive negotiation.

4678 "Professional services" means work performed by an independent contractor within the scope of the  
 4679 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,  
 4680 dentistry, medicine, optometry, pharmacy or professional engineering.

4681 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,  
 4682 post, commission, committee, institution, board or political subdivision created by law to exercise some  
 4683 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
 4684 activities described in these Rules.

4685 "Public contract" means an agreement between the Institution and a nongovernmental source that is  
 4686 enforceable in a court of law.

4687 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform  
 4688 fully the contract requirements and the moral and business integrity and reliability that will assure good  
 4689 faith performance, and who has been prequalified, if required.

4690 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects  
 4691 to the Invitation to Bid.

4692 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative  
 4693 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

4694 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction  
 4695 adopted by the governing body of the Covered Institution.

4696 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
 4697 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
 4698 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
 4699 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
 4700 established for bid opening.

4701 "Services" means any work performed by an independent contractor wherein the service rendered  
 4702 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials  
 4703 and supplies.

4704 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working  
 4705 environment and individual goals that utilizes work experience and related services for assisting the  
 4706 handicapped person to progress toward normal living and a productive vocational status.

4707 § 5. Methods of procurement. -

4708 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for  
 4709 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,  
 4710 or competitive negotiation as provided in this section, unless otherwise authorized by law.

4711 B. Professional services shall be procured by competitive negotiation. Qualification-based selection  
 4712 shall be used for design services.

4713 C. Goods, services, or insurance may be procured by competitive negotiation.

4714 D. Construction may be procured only by competitive sealed bidding, except that competitive  
 4715 negotiation may be used in the following instances upon a determination made in advance by the  
 4716 Institution and set forth in writing that competitive sealed bidding is either not practicable or not  
 4717 fiscally advantageous to the public, which writing shall document the basis for this determination:

4718 1. By the Institution on a fixed price design-build basis or construction management basis under  
 4719 § 7;

4720 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;

4721 3. By the Institution for the construction of highways and any draining, dredging, excavation,  
 4722 grading or similar work upon real property; or

4723 E. Upon a determination in writing that there is only one source practicably available for that  
 4724 which is to be procured, a contract may be negotiated and awarded to that source without competitive  
 4725 sealed bidding or competitive negotiation. The writing shall document the basis for this determination.

4726 The Institution shall issue a written notice stating that only one source was determined to be practicably  
 4727 available, and identifying that which is being procured, the contractor selected, and the date on which  
 4728 the contract was or will be awarded. This notice shall be posted in a designated public area, which may

4729 be the Department of General Services' website for the Commonwealth's central electronic procurement  
 4730 system, or published in a newspaper of general circulation on the day the Institution awards or  
 4731 announces its decision to award the contract, whichever occurs first. Public notice shall also be

4732 published on the Department of General Services' website for the Commonwealth's central electronic  
 4733 procurement system and may be published on other appropriate websites.

4734 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
4735 competitive negotiation; however, such procurement shall be made with such competition as is  
4736 practicable under the circumstances. A written determination of the basis for the emergency and for the  
4737 selection of the particular contractor shall be included in the contract file. The Institution shall issue a  
4738 written notice stating that the contract is being awarded on an emergency basis, and identifying that  
4739 which is being procured, the contractor selected, and the date on which the contract was or will be  
4740 awarded. This notice shall be posted in a designated public area, which may be the Department of  
4741 General Services' website for the Commonwealth's central electronic procurement system, or published  
4742 in a newspaper of general circulation on the day the Institution awards or announces its decision to  
4743 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may  
4744 also be published on the Department of General Services' website for the Commonwealth's central  
4745 electronic procurement system and other appropriate websites.

4746 G. The Institution may establish purchase procedures, if adopted in writing, not requiring  
4747 competitive sealed bids or competitive negotiation for single or term contracts for goods and services  
4748 other than professional services if the aggregate or the sum of all phases is not expected to exceed  
4749 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

4750 H. The Institution may establish purchase procedures, if adopted in writing, not requiring  
4751 competitive negotiation for single or term contracts for professional services if the aggregate or the sum  
4752 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide  
4753 for competition wherever practicable.

4754 I. Upon a determination made in advance by the Institution and set forth in writing that the  
4755 purchase of goods, products or commodities from a public auction sale is in the best interests of the  
4756 public, such items may be purchased at the auction, including online public auctions. The writing shall  
4757 document the basis for this determination.

4758 J. The purchase of goods or nonprofessional services, but not construction or professional services,  
4759 may be made by reverse auctioning.

4760 § 6. Cooperative procurement. -

4761 A. In circumstances where the Institution determines and documents that statewide contracts for  
4762 goods and services, including information technology and telecommunications goods and services, do  
4763 not provide goods and services to the Institution that meet its business goals and objectives, the  
4764 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement  
4765 arrangement on behalf of or in conjunction with public bodies, public or private health or educational  
4766 institutions, other public or private organizations or entities, including public-private partnerships,  
4767 charitable organizations, health care provider alliances or purchasing organizations or entities, or with  
4768 public agencies or institutions or group purchasing organizations of the several states, territories of the  
4769 United States, or the District of Columbia, for the purpose of combining requirements to effect cost  
4770 savings or reduce administrative expense in any acquisition of goods and services, other than  
4771 professional services. The Institution may purchase from any authority, department, agency, institution,  
4772 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not  
4773 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to  
4774 bid specified that the procurement was being conducted on behalf of other public bodies. In such  
4775 instances, deviation from the procurement procedures set forth in these Rules and the administrative  
4776 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of  
4777 the above, use of cooperative contracts shall conform to the business requirements of the  
4778 Commonwealth's electronic procurement system, including the requirement for payment of applicable  
4779 fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee  
4780 that will allow for participation in any such arrangement.

4781 B. In circumstances where statewide contracts for goods and services, including information  
4782 technology and telecommunications goods and services, do not provide goods and services to meet the  
4783 Institution's business goals and objectives, and as authorized by the United States Congress and  
4784 consistent with applicable federal regulations, and provided the terms of the contract permit such  
4785 purchases:

4786 1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services  
4787 Administration contract or a contract awarded by any other agency of the U.S. government; and

4788 2. The Institution may purchase telecommunications and information technology goods and  
4789 nonprofessional services from a U.S. General Services Administration contract or a contract awarded by  
4790 any other agency of the U.S. government.

4791 § 7. Design-build or construction management contracts authorized. -

4792 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed  
4793 price design-build basis or construction management basis in accordance with the provisions of this  
4794 section.

4795 B. Procurement of construction by the design-build or construction management method shall be a

4796 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their  
4797 qualifications. Based upon the information submitted and any other relevant information which the  
4798 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be  
4799 selected by the Commonwealth and requested to submit proposals.

4800 § 8. Modification of the contract. -

4801 A. A contract awarded by the Institution may include provisions for modification of the contract  
4802 during performance, but no fixed-price contract may be increased by more than twenty-five percent of  
4803 the amount of the contract or \$50,000, whichever is greater, without the advance written approval of  
4804 the Institution's president or his designee. In no event may the amount of any contract, without  
4805 adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror  
4806 from the consequences of an error in its bid or offer.

4807 B. The Institution may extend the term of an existing contract for services to allow completion of  
4808 any work undertaken but not completed during the original term of the contract.

4809 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract  
4810 modifications.

4811 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

4812 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
4813 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis  
4814 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the  
4815 Institution shall include businesses selected from a list made available by the Department of Minority  
4816 Business Enterprise.

4817 B. The Institution shall establish programs consistent with this section to facilitate the participation  
4818 of small businesses and businesses owned by women and minorities in procurement transactions. The  
4819 programs established shall be in writing and shall include cooperation with the Department of Minority  
4820 Business Enterprise, the United States Small Business Administration, and other public or private  
4821 agencies. The Institution shall submit annual progress reports on minority business procurement to the  
4822 Department of Minority Business Enterprise.

4823 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
4824 analysis that documents a statistically significant disparity between the availability and utilization of  
4825 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require  
4826 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing  
4827 law.

4828 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
4829 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination  
4830 that employing ex-offenders on the specific contract is not in its best interest.

4831 § 10. Employment discrimination by contractor prohibited; required contract provisions. - The  
4832 Institution shall include in every contract of more than \$10,000 the following provisions:

4833 1. During the performance of this contract, the contractor agrees as follows:

4834 a. The contractor will not discriminate against any employee or applicant for employment because  
4835 of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law  
4836 relating to discrimination in employment, except where there is a bona fide occupational qualification  
4837 reasonably necessary to the normal operation of the contractor. The contractor agrees to post in  
4838 conspicuous places, available to employees and applicants for employment, notices setting forth the  
4839 provisions of this nondiscrimination clause.

4840 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the  
4841 contractor, will state that such contractor is an equal opportunity employer.

4842 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation  
4843 shall be deemed sufficient for the purpose of meeting the requirements of this section.

4844 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every  
4845 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
4846 subcontractor or vendor.

4847 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The  
4848 Institution shall include in every contract over \$10,000 the following provisions:

4849 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace  
4850 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for  
4851 employment, a statement notifying employees that the unlawful manufacture, sale, distribution,  
4852 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's  
4853 workplace and specifying the actions that will be taken against employees for violations of such  
4854 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the  
4855 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the  
4856 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be

4857 *binding upon each subcontractor or vendor.*

4858 *For the purposes of this section, "drug-free workplace" means a site for the "performance of work*  
4859 *done in connection with a specific contract awarded to a contractor in accordance with these Rules, the*  
4860 *employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,*  
4861 *dispensation, possession or use of any controlled substance or marijuana during the performance of the*  
4862 *contract.*

4863 *§ 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a*  
4864 *certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or*  
4865 *manufacturer named and shall be deemed to convey the general style, type, character, and quality of the*  
4866 *article desired. Any article that the Institution in its sole discretion determines to be the equal of that*  
4867 *specified, considering quality, workmanship, economy of operation, and suitability for the purpose*  
4868 *intended, shall be accepted.*

4869 *§ 13. Comments concerning specifications. - The Institution shall establish procedures whereby*  
4870 *comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal*  
4871 *can be received and considered prior to the time set for receipt of bids or proposals or award of the*  
4872 *contract.*

4873 *§ 14. Prequalification generally; prequalification for construction. -*

4874 *A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or*  
4875 *construction, and consideration of bids or proposals limited to prequalified contractors. Any*  
4876 *prequalification procedure shall be established in writing and sufficiently in advance of its*  
4877 *implementation to allow potential contractors a fair opportunity to complete the process.*

4878 *B. Any prequalification of prospective contractors for construction by the Institution shall be*  
4879 *pursuant to a prequalification process for construction projects adopted by the Institution. The process*  
4880 *shall be consistent with the provisions of this section.*

4881 *The application form used in such process shall set forth the criteria upon which the qualifications*  
4882 *of prospective contractors will be evaluated. The application form shall request of prospective*  
4883 *contractors only such information as is appropriate for an objective evaluation of all prospective*  
4884 *contractors pursuant to such criteria. The form shall allow the prospective contractor seeking*  
4885 *prequalification to request, by checking the appropriate box, that all information voluntarily submitted*  
4886 *by the contractor pursuant to this subsection shall be considered a trade secret or proprietary*  
4887 *information subject to the provisions of subsection D of § 34 of these Rules.*

4888 *In all instances in which the Institution requires prequalification of potential contractors for*  
4889 *construction projects, advance notice shall be given of the deadline for the submission of*  
4890 *prequalification applications. The deadline for submission shall be sufficiently in advance of the date*  
4891 *set for the submission of bids for such construction so as to allow the procedures set forth in this*  
4892 *subsection to be accomplished.*

4893 *At least thirty days prior to the date established for submission of bids or proposals under the*  
4894 *procurement of the contract for which the prequalification applies, the Institution shall advise in writing*  
4895 *each contractor who submitted an application whether that contractor has been prequalified. In the*  
4896 *event that a contractor is denied prequalification, the written notification to the contractor shall state*  
4897 *the reasons for the denial of prequalification and the factual basis of such reasons.*

4898 *A decision by the Institution denying prequalification under the provisions of this subsection shall be*  
4899 *final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

4900 *C. The Institution may deny prequalification to any contractor only if the Institution finds one of the*  
4901 *following:*

4902 *1. The contractor does not have sufficient financial ability to perform the contract that would result*  
4903 *from such procurement. If a bond is required to ensure performance of a contract, evidence that the*  
4904 *contractor can acquire a surety bond from a corporation included on the United States Treasury list of*  
4905 *acceptable surety corporations in the amount and type required by the Institution shall be sufficient to*  
4906 *establish the financial ability of the contractor to perform the contract resulting from such procurement;*

4907 *2. The contractor does not have appropriate experience to perform the construction project in*  
4908 *question;*

4909 *3. The contractor or any officer, director or owner thereof has had judgments entered against him*  
4910 *within the past ten years for the breach of contracts for governmental or nongovernmental construction,*  
4911 *including, but not limited to, design-build or construction management;*

4912 *4. The contractor has been in substantial noncompliance with the terms and conditions of prior*  
4913 *construction contracts with the Institution without good cause. If the Institution has not contracted with*  
4914 *a contractor in any prior construction contracts, the Institution may deny prequalification if the*  
4915 *contractor has been in substantial noncompliance with the terms and conditions of comparable*  
4916 *construction contracts with another public body without good cause. The Institution may not utilize this*  
4917 *provision to deny prequalification unless the facts underlying such substantial noncompliance were*  
4918 *documented in writing in the prior construction project file and such information relating thereto given*

4919 to the contractor at that time, with the opportunity to respond;

4920 5. The contractor or any officer, director, owner, project manager, procurement manager or chief  
4921 financial official thereof has been convicted within the past ten years of a crime related to governmental  
4922 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6  
4923 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental  
4924 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  
4925 substantially similar law of the United States or another state;

4926 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an  
4927 established debarment procedure from bidding or contracting by any public body, agency of another  
4928 state or agency of the federal government; and

4929 7. The contractor failed to provide to the Institution in a timely manner any information requested  
4930 by the Institution relevant to subdivisions 1 through 6 of this subsection.

4931 § 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid  
4932 from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest  
4933 responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to  
4934 obtain a contract price within available funds. However, the negotiation may be undertaken only under  
4935 conditions and procedures described in writing and approved by the Institution prior to issuance of the  
4936 Invitation to Bid and summarized therein.

4937 § 16. Cancellation, rejection of bids; waiver of informalities. -

4938 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or  
4939 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of  
4940 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,  
4941 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a  
4942 particular responsive and responsible bidder or offeror.

4943 B. The Institution may waive informalities in bids.

4944 § 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no  
4945 insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus  
4946 lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to  
4947 the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall  
4948 preclude the Institution from debarring a prospective insurer pursuant to § 18.

4949 § 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of  
4950 supplies, services, insurance or construction, for specified periods of time. Any debarment procedure  
4951 shall be established in writing by the Institution. Any debarment procedure may provide for debarment  
4952 on the basis of a contractor's unsatisfactory performance for the Institution.

4953 § 19. Purchase programs for recycled goods; Institution responsibilities. -

4954 A. The Institution may implement a purchase program for recycled goods and may coordinate its  
4955 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8 of  
4956 the Code of Virginia and §§ 20 and 22 of these Rules.

4957 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets  
4958 Development Council, shall advise the Institution concerning the designation of recycled goods.

4959 § 20. Preference for Virginia products with recycled content and for Virginia firms. -

4960 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or  
4961 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be  
4962 decided by lot.

4963 B. Whenever any bidder is a resident of any other state and such state under its laws allows a  
4964 resident contractor of that state a preference, a like preference may be allowed by the Institution to the  
4965 lowest responsive and responsible bidder who is a resident of Virginia.

4966 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where  
4967 goods are being offered, and existing price preferences have already been taken into account, preference  
4968 shall be given to the bidder whose goods contain the greatest amount of recycled content.

4969 § 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract  
4970 for coal to be purchased for use in the Institution with state funds, the Institution shall procure using  
4971 competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering  
4972 coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price  
4973 of the low responsive and responsible bidder offering coal mined elsewhere.

4974 § 22. Preference for recycled paper and paper products used by the Institution. -

4975 A. In determining the award of any contract for paper and paper products to be purchased for use  
4976 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable  
4977 for the purpose intended, so long as the price is not more than ten percent greater than the price of the  
4978 low responsive and responsible bidder or offeror offering a product that does not qualify under  
4979 subsection B.

4980 B. For purposes of this section, recycled paper and paper products means any paper or paper  
4981 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

4982 § 23. Withdrawal of bid due to error. -

4983 A. A bidder for a public construction contract, other than a contract for construction or  
4984 maintenance of public highways, may withdraw his bid from consideration if the price bid was  
4985 substantially lower than the other bids due solely to a mistake in the bid, provided the bid was  
4986 submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and  
4987 was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of  
4988 work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error  
4989 or unintentional omission can be clearly shown by objective evidence drawn from inspection of original  
4990 work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

4991 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from  
4992 consideration if the price bid would have been substantially lower than the other bids due solely to the  
4993 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of  
4994 work, labor or material made directly in the compilation of a bid that shall be clearly shown by  
4995 objective evidence drawn from inspection of original work papers, documents and materials used in the  
4996 preparation of the bid sought to be withdrawn.

4997 One of the following procedures for withdrawal of a bid shall be selected by the Institution and  
4998 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to  
4999 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall  
5000 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or  
5001 designated official his original work papers, documents and materials used in the preparation of the bid  
5002 within one day after the date fixed for submission of bids. The work papers shall be delivered by the  
5003 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either  
5004 instance, the work papers, documents and materials may be considered as trade secrets or proprietary  
5005 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened  
5006 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder  
5007 shall have two hours after the opening of bids within which to claim in writing any mistake as defined  
5008 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour  
5009 period has elapsed. The mistake shall be proved only from the original work papers, documents and  
5010 materials delivered as required herein.

5011 B. The Institution may establish procedures for the withdrawal of bids for other than construction  
5012 contracts.

5013 C. No bid shall be withdrawn under this section when the result would be the awarding of the  
5014 contract on another bid of the same bidder or of another bidder in which the ownership of the  
5015 withdrawing bidder is more than five percent.

5016 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed  
5017 to be the low bid.

5018 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or  
5019 labor to or perform any subcontract or other work agreement for the person or firm to whom the  
5020 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for  
5021 which the withdrawn bid was submitted.

5022 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify  
5023 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the  
5024 bid price, provided such bidder is a responsible and responsive bidder.

5025 § 24. Contract Pricing Arrangements. -

5026 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other  
5027 basis that is not prohibited by these Rules.

5028 B. Except in case of emergency affecting the public health, safety or welfare, no public contract  
5029 shall be awarded on the basis of cost plus a percentage of cost.

5030 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis  
5031 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in  
5032 whole or part as a percentage of such claims, shall not be prohibited by this section.

5033 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

5034 A. No contractor shall perform any work on a construction project of the Institution unless he (i)  
5035 has obtained, and continues to maintain for the duration of the work, workers' compensation coverage  
5036 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides  
5037 prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

5038 B. The Department of General Services shall provide the form to the Institution. Failure of the  
5039 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)  
5040 of subsection A.

5041 C. No subcontractor shall perform any work on a construction project of the Institution unless he

5042 *has obtained, and continues to maintain for the duration of such work, workers' compensation coverage*  
 5043 *required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.*

5044 § 26. *Retainage on construction contracts. -*

5045 *A. In any contract issued by the Institution for construction that provides for progress payments in*  
 5046 *installments based upon an estimated percentage of completion, the contractor shall be paid at least*  
 5047 *ninety-five percent of the earned sum when payment is due, with no more than five percent being*  
 5048 *retained to ensure faithful performance of the contract. All amounts withheld may be included in the*  
 5049 *final payment.*

5050 *B. Any subcontract for a public project that provides for similar progress payments shall be subject*  
 5051 *to the provisions of this section.*

5052 § 27. *Public construction contract provisions barring damages for unreasonable delays declared*  
 5053 *void. -*

5054 *A. Any provision contained in any public construction contract of the Institution that purports to*  
 5055 *waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable*  
 5056 *delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the*  
 5057 *extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to*  
 5058 *causes within their control shall be void and unenforceable as against public policy.*

5059 *B. Subsection A shall not be construed to render void any provision of a public construction*  
 5060 *contract awarded by the Institution that:*

5061 *1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the*  
 5062 *contractor, or its subcontractors, agents or employees;*

5063 *2. Requires notice of any delay by the party claiming the delay;*

5064 *3. Provides for liquidated damages for delay; or*

5065 *4. Provides for arbitration or any other procedure designed to settle contract disputes.*

5066 *C. A contractor making a claim against the Institution for costs or damages due to the alleged*  
 5067 *delaying of the contractor in the performance of its work under any public construction contract of the*  
 5068 *Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the*  
 5069 *Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage*  
 5070 *shall be equal to the percentage of the contractor's total delay claim that is determined through*  
 5071 *litigation or arbitration to be false or to have no basis in law or in fact.*

5072 *D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of*  
 5073 *the contractor in the performance of work under any public construction contract for the Institution, it*  
 5074 *shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to*  
 5075 *investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution*  
 5076 *shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is*  
 5077 *determined through litigation or arbitration to have been made in bad faith.*

5078 § 28. *Bid bonds. -*

5079 *A. Except in cases of emergency, all bids or proposals for construction contracts in excess of*  
 5080 *\$1,000,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is*  
 5081 *authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he*  
 5082 *will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not*  
 5083 *exceed five percent of the amount bid.*

5084 *B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for*  
 5085 *which the bond was written and the next low bid, or (ii) the face amount of the bid bond.*

5086 *C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids*  
 5087 *or proposals for construction contracts anticipated to be less than \$1,000,000.*

5088 § 29. *Performance and payment bonds. -*

5089 *A. Upon the award by the Institution of any (i) public construction contract exceeding \$1,000,000*  
 5090 *awarded to any prime contractor or (ii) public construction contract exceeding \$1,000,000 awarded to*  
 5091 *any prime contractor requiring the performance of labor or the furnishing of materials for buildings,*  
 5092 *structures or other improvements to real property owned by the Institution, the contractor shall furnish*  
 5093 *to the Institution the following bonds:*

5094 *1. Except for transportation-related projects, a performance bond in the sum of the contract amount*  
 5095 *conditioned upon the faithful performance of the contract in strict conformity with the plans,*  
 5096 *specifications and conditions of the contract. For transportation-related projects, such bond shall be in*  
 5097 *a form and amount satisfactory to the Institution.*

5098 *2. A payment bond in the sum of the contract amount. The bond shall be for the protection of*  
 5099 *claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom*  
 5100 *the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the*  
 5101 *contract, and shall be conditioned upon the prompt payment for all materials furnished or labor*  
 5102 *supplied or performed in the furtherance of the work.*

5103 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but  
5104 only for periods when the equipment rented is actually used at the site.

5105 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor  
5106 that are authorized to do business in Virginia.

5107 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

5108 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

5109 E. Nothing in this section shall preclude the Institution from requiring payment or performance  
5110 bonds for construction contracts below \$1,000,000.

5111 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish  
5112 a payment bond with surety thereon in the sum of the full amount of the contract with such  
5113 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are  
5114 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the  
5115 work provided for in the subcontract.

5116 § 30. Alternative forms of security. -

5117 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash  
5118 escrow in the face amount required for the bond.

5119 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the  
5120 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain  
5121 designated funds in the face amount required for the bid, payment or performance bond. Approval shall  
5122 be granted only upon a determination that the alternative form of security proffered affords protection  
5123 to the Institution equivalent to a corporate surety's bond.

5124 § 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or  
5125 performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for  
5126 Proposal.

5127 § 32. Action on performance bond. - No action against the surety on a performance bond shall be  
5128 brought by the Institution unless brought within one year after (i) completion of the contract, including  
5129 the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty  
5130 that gave rise to the action.

5131 § 33. Actions on payment bonds; waiver of right to sue. -

5132 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished  
5133 material in accordance with the contract documents in furtherance of the work provided in any contract  
5134 for which a payment bond has been given, and who has not been paid in full before the expiration of 90  
5135 days after the day on which the claimant performed the last of the labor or furnished the last of the  
5136 materials for which he claims payment, may bring an action on the payment bond to recover any  
5137 amount due him for the labor or material. The obligee named in the bond need not be named a party  
5138 to the action.

5139 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no  
5140 contractual relationship, express or implied, with the contractor, may bring an action on the  
5141 contractor's payment bond only if he has given written notice to the contractor within 180 days from the  
5142 day on which the claimant performed the last of the labor or furnished the last of the materials for  
5143 which he claims payment, stating with substantial accuracy the amount claimed and the name of the  
5144 person for whom the work was performed or to whom the material was furnished. Notice to the  
5145 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to  
5146 such contractor at any place where his office is regularly maintained for the transaction of business.  
5147 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not  
5148 be subject to the time limitations stated in this subsection.

5149 C. Any action on a payment bond shall be brought within one year after the day on which the  
5150 person bringing such action last performed labor or last furnished or supplied materials.

5151 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless  
5152 it is in writing, signed by the person whose right is waived, and executed after such person has  
5153 performed labor or furnished material in accordance with the contract documents.

5154 § 34. Public inspection of certain records. -

5155 A. Except as provided in this section, all proceedings, records, contracts and other public records  
5156 relating to procurement transactions shall be open to the inspection of any citizen, or any interested  
5157 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et  
5158 seq.).

5159 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution  
5160 shall not be open to public inspection.

5161 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect  
5162 bid records within a reasonable time after the opening of all bids but prior to award, except in the  
5163 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,  
5164 bid records shall be open to public inspection only after award of the contract.

5165 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect  
 5166 proposal records within a reasonable time after the evaluation and negotiations of proposals are  
 5167 completed but prior to award, except in the event that the Institution decides not to accept any of the  
 5168 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection  
 5169 only after award of the contract.

5170 E. Any inspection of procurement transaction records under this section shall be subject to  
 5171 reasonable restrictions to ensure the security and integrity of the records.

5172 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in  
 5173 connection with a procurement transaction or prequalification application submitted pursuant to  
 5174 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et  
 5175 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to  
 5176 or upon submission of the data or other materials, (ii) identify the data or other materials to be  
 5177 protected, and (iii) state the reasons why protection is necessary.

5178 § 35. Exemption for certain transactions. -

5179 A. The provisions of these Rules shall not apply to:

5180 1. The selection of services related to the management and investment of the Institution's endowment  
 5181 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be  
 5182 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by  
 5183 § 23-76.1.

5184 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the  
 5185 Institution. However, such purchase procedures shall provide for competition where practicable.

5186 3. Procurement of any construction or planning and design services for construction by the  
 5187 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
 5188 obligated to conform to procurement procedures that are established by federal statutes or regulations,  
 5189 whether or not those federal procedures are in conformance with the provisions of these Rules.

5190 4. The University of Virginia Medical Center.

5191 5. The purchase of goods and services by the Institution when such purchases are made under a  
 5192 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

5193 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
 5194 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
 5195 regulations not in conformance with the provisions of these Rules, the Institution may comply with such  
 5196 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination  
 5197 of the Institution's President or his designee that acceptance of the grant or contract funds under the  
 5198 applicable conditions is in the public interest. Such determination shall state the specific provision of  
 5199 these Rules in conflict with the conditions of the grant or contract.

5200 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

5201 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into  
 5202 contracts with faith-based organizations for the purposes described in this section on the same basis as  
 5203 any other nongovernmental source without impairing the religious character of such organization, and  
 5204 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

5205 B. For the purposes of this section, "faith-based organization" means a religious organization that is  
 5206 or applies to be a contractor to provide goods or services for programs funded by the block grant  
 5207 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
 5208 104-193.

5209 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this  
 5210 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's  
 5211 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based  
 5212 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of  
 5213 religious freedom by the recipients of such goods, services, or disbursements.

5214 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
 5215 purchase orders prominently display a nondiscrimination statement indicating that it does not  
 5216 discriminate against faith-based organizations.

5217 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any  
 5218 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on  
 5219 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on  
 5220 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as  
 5221 other organizations that contract with public bodies to account for the use of the funds provided;  
 5222 however, if the faith-based organization segregates public funds into separate accounts, only the  
 5223 accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in  
 5224 clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

5225 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,

5226 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent  
 5227 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to  
 5228 expenditures pursuant to contracts, if any, for the services of chaplains.

5229 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization  
 5230 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based  
 5231 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of  
 5232 a particular religion.

5233 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant  
 5234 to a contract between the Institution and a faith-based organization, objects to the religious character of  
 5235 the faith-based organization from which the individual receives or would receive the goods, services, or  
 5236 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date  
 5237 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

5238 The Institution shall provide to each individual who applies for or receives goods, services, or  
 5239 disbursements provided pursuant to a contract between the Institution and a faith-based organization a  
 5240 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based  
 5241 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's  
 5242 charitable or religious character, practices, or expression. No provider of services may discriminate  
 5243 against you on the basis of religion, a religious belief, or your refusal to actively participate in a  
 5244 religious practice. If you object to a particular provider because of its religious character, you may  
 5245 request assignment to a different provider. If you believe that your rights have been violated, please  
 5246 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

5247 § 37. Exemptions from competition for certain transactions. - The Institution may enter into  
 5248 contracts without competition, as that term is described in subsections A through J of § 5 (Methods of  
 5249 procurement) of these Rules, for:

5250 1. The purchase of goods or services that are produced or performed by or related to:

5251 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the  
 5252 Blind and Vision Impaired;

5253 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or  
 5254 supported employment services serving the handicapped;

5255 c. Private educational institutions; or

5256 d. Other public educational institutions.

5257 2. Speakers and performing artists;

5258 3. Memberships and Association dues;

5259 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of  
 5260 goods or services by the Institution;

5261 5. Group travel in foreign countries;

5262 6. Conference facilities and services;

5263 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,  
 5264 registration and tournament fees;

5265 8. Royalties; or

5266 9. The purchase of legal services, provided that the Office of the Attorney General has been  
 5267 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

5268 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain  
 5269 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility  
 5270 service without competitive sealed bidding or competitive negotiation if purchased through an  
 5271 association of which the Institution is a member if the association was formed and is maintained for the  
 5272 purpose of promoting the interest and welfare of and developing close relationships with similar public  
 5273 bodies, provided such association has procured the insurance or electric utility services by use of  
 5274 competitive principles and provided that the Institution has made a determination in advance after  
 5275 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive  
 5276 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this  
 5277 determination.

5278 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning:

5279 "Contractor" means the entity that has a direct contract with the Institution.

5280 "Debtor" means any individual, business, or group having a delinquent debt or account with any  
 5281 state agency that obligation has not been satisfied or set aside by court order or discharged in  
 5282 bankruptcy.

5283 "Payment date" means either (i) the date on which payment is due under the terms of a contract for  
 5284 provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days  
 5285 after receipt of a proper invoice by the Institution or its agent or (b) thirty days after receipt of the  
 5286 goods or services by the Institution..

5287 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor

5288 to whom the contract was awarded or to any subcontractor in the performance of the work provided for  
5289 in such contract.

5290 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment  
5291 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

5292 § 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the  
5293 provisions of § 26 relating to retainage shall remain valid.

5294 § 42. Prompt payment of bills by the Institution. -

5295 A. The Institution shall promptly pay for the completely delivered goods or services by the required  
5296 payment date.

5297 Payment shall be deemed to have been made when offset proceedings have been instituted, as  
5298 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

5299 B. Separate payment dates may be specified for contracts under which goods or services are  
5300 provided in a series of partial deliveries or executions to the extent that such contract provides for  
5301 separate payment for such partial delivery or execution.

5302 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where  
5303 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall  
5304 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by  
5305 the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods  
5306 or services.

5307 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made  
5308 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these  
5309 Rules.

5310 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall  
5311 include:

5312 1. A payment clause that obligates the contractor to take one of the two following actions within  
5313 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the  
5314 subcontractor under that contract:

5315 a. Pay the subcontractor for the proportionate share of the total payment received from the  
5316 Institution attributable to the work performed by the subcontractor under that contract; or

5317 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of  
5318 the subcontractor's payment with the reason for nonpayment.

5319 2. A payment clause that requires (i) individual contractors to provide their social security numbers  
5320 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification  
5321 numbers.

5322 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all  
5323 amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor  
5324 of payment from the Institution for work performed by the subcontractor under that contract, except for  
5325 amounts withheld as allowed in subdivision 1.

5326 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,  
5327 interest shall accrue at the rate of one percent per month."

5328 Any such contract awarded shall further require the contractor to include in each of its subcontracts  
5329 a provision requiring each subcontractor to include or otherwise be subject to the same payment and  
5330 interest requirements with respect to each lower-tier subcontractor.

5331 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment  
5332 clause in this section shall not be construed to be an obligation of the Institution. A contract  
5333 modification shall not be made for the purpose of providing reimbursement for the interest charge. A  
5334 cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

5335 § 46. Interest penalty; exceptions. -

5336 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by  
5337 the Institution to a vendor that remain unpaid after seven days following the payment date. However,  
5338 nothing in this section shall affect any contract providing for a different rate of interest, or for the  
5339 payment of interest in a different manner.

5340 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on  
5341 corporate loans (prime rate) at large United States money center commercial banks as reported daily in  
5342 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of  
5343 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of  
5344 interest established pursuant to § 58.1-1812 of the Code of Virginia.

5345 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed  
5346 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of  
5347 delivery of goods or services or the accuracy of any invoice received for the goods or services. The  
5348 exception from the interest penalty provided by this subsection shall apply only to that portion of a

5349 *delayed payment that is actually the subject of the disagreement and shall apply only for the duration of*  
5350 *the disagreement.*

5351 *D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the*  
5352 *period of time prior to the date the final payment is due. Nothing contained herein shall prevent a*  
5353 *contractor from receiving interest on such funds under an approved escrow agreement.*

5354 *E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or*  
5355 *portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the*  
5356 *Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the*  
5357 *payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is*  
5358 *determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue*  
5359 *at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven*  
5360 *days following the payment date.*

5361 *§ 47. Ineligibility. -*

5362 *A. Any bidder, offeror or contractor refused permission to participate, or disqualified from*  
5363 *participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the*  
5364 *issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the*  
5365 *bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,*  
5366 *and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so*  
5367 *requested by the bidder within five business days after receipt of the notice.*

5368 *Within ten business days after receipt of the notice, the bidder may submit rebuttal information*  
5369 *challenging the evaluation. The Institution shall issue its written determination of disqualification or*  
5370 *ineligibility based on all information in the possession of the Institution, including any rebuttal*  
5371 *information, within five business days of the date the Institution received such rebuttal information.*

5372 *If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to*  
5373 *participate in the public contract, the Institution shall cancel the proposed disqualification action. If the*  
5374 *evaluation reveals that the bidder should be refused permission to participate, or disqualified from*  
5375 *participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The*  
5376 *notice shall state the basis for the determination, which shall be final unless the bidder appeals the*  
5377 *decision within ten days after receipt of the notice by invoking administrative procedures meeting the*  
5378 *standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided*  
5379 *in § 54.*

5380 *B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in*  
5381 *accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be*  
5382 *restoration of eligibility.*

5383 *§ 48. Appeal of denial of withdrawal of bid. -*

5384 *A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final*  
5385 *and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by*  
5386 *invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by*  
5387 *instituting legal action as provided in § 54.*

5388 *B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,*  
5389 *prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the*  
5390 *difference between the bid sought to be withdrawn and the next low bid. Such security shall be released*  
5391 *only upon a final determination that the bidder was entitled to withdraw the bid.*

5392 *C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an*  
5393 *honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the*  
5394 *Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation*  
5395 *to Bid, the sole relief shall be withdrawal of the bid.*

5396 *§ 49. Determination of nonresponsibility. -*

5397 *A. Following public opening and announcement of bids received on an Invitation to Bid, the*  
5398 *Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed*  
5399 *bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent*  
5400 *low bidder is responsible. If the Institution so determines, then it may proceed with an award in*  
5401 *accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution*  
5402 *determines that the apparent low bidder is not responsible, it shall proceed as follows:*

5403 *1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify*  
5404 *the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for*  
5405 *the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that*  
5406 *relate to the determination, if so requested by the bidder within five business days after receipt of the*  
5407 *notice.*

5408 *2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information*  
5409 *challenging the evaluation. The Institution shall issue its written determination of responsibility based*  
5410 *on all information in the possession of the Institution, including any rebuttal information, within five*

5411 *business days of the date the Institution received the rebuttal information. At the same time, the*  
 5412 *Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

5413 *3. Such notice shall state the basis for the determination, which shall be final unless the bidder*  
 5414 *appeals the decision within ten days after receipt of the notice by invoking administrative procedures*  
 5415 *meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action*  
 5416 *as provided in § 54.*

5417 *The provisions of this subsection shall not apply to procurements involving the prequalification of*  
 5418 *bidders and the rights of any potential bidders under such prequalification to appeal a decision that*  
 5419 *such bidders are not responsible.*

5420 *B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the*  
 5421 *Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in*  
 5422 *accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or*  
 5423 *conditions of the Invitation to Bid, and the award of the contract in question has not been made, the*  
 5424 *sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or*  
 5425 *directed award as provided in subsection A of § 54, or both.*

5426 *If it is determined that the decision of the Institution was not an honest exercise of discretion, but*  
 5427 *rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable*  
 5428 *state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract*  
 5429 *has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

5430 *C. A bidder contesting a determination that he is not a responsible bidder for a particular contract*  
 5431 *shall proceed under this section, and may not protest the award or proposed award under the*  
 5432 *provisions of § 50 of these Rules.*

5433 *D. Nothing contained in this section shall be construed to require the Institution, when procuring by*  
 5434 *competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed*  
 5435 *to be the most advantageous.*

5436 *§ 50. Protest of award or decision to award. -*

5437 *A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall*  
 5438 *submit the protest in writing to the Institution, or an official designated by the Institution, no later than*  
 5439 *ten days after the award or the announcement of the decision to award, whichever occurs first. Public*  
 5440 *notice of the award or the announcement of the decision to award shall be given by the Institution in*  
 5441 *the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any*  
 5442 *potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to*  
 5443 *protest the award or decision to award such contract shall submit the protest in the same manner no*  
 5444 *later than ten days after posting or publication of the notice of such contract as provided in § 5 of these*  
 5445 *Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part*  
 5446 *upon information contained in public records pertaining to the procurement transaction that are subject*  
 5447 *to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall*  
 5448 *expire ten days after those records are available for inspection by such bidder or offeror under § 34, or*  
 5449 *at such later time as provided in this section. No protest shall lie for a claim that the selected bidder*  
 5450 *or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the*  
 5451 *protest and the relief sought. The Institution or designated official shall issue a decision in writing*  
 5452 *within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or*  
 5453 *offeror appeals within ten days of receipt of the written decision by invoking administrative procedures*  
 5454 *meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action*  
 5455 *as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the*  
 5456 *validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of*  
 5457 *Alternative Dispute Resolution ("ADR") shall constitute an administrative appeal procedure meeting the*  
 5458 *standards of § 55 of these Rules.*

5459 *B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then*  
 5460 *the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise*  
 5461 *it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary*  
 5462 *or capricious, then the sole relief shall be as hereinafter provided.*

5463 *Where the award has been made but performance has not begun, the performance of the contract*  
 5464 *may be enjoined. Where the award has been made and performance has begun, the Institution may*  
 5465 *declare the contract void upon a finding that this action is in the best interest of the public. Where a*  
 5466 *contract is declared void, the performing contractor shall be compensated for the cost of performance*  
 5467 *up to the time of such declaration. In no event shall the performing contractor be entitled to lost*  
 5468 *profits.*

5469 *C. Where the Institution, an official designated by it, or an appeals board determines, after a*  
 5470 *hearing held following reasonable notice to all bidders, that there is probable cause to believe that a*  
 5471 *decision to award was based on fraud or corruption or on an act in violation of these Rules, the*

5472 Institution, designated official or appeals board may enjoin the award of the contract to a particular  
5473 bidder.

5474 § 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the  
5475 validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be  
5476 affected by the fact that a protest or appeal has been filed.

5477 § 52. Stay of award during protest. - An award need not be delayed for the period allowed a bidder  
5478 or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing  
5479 of a timely legal action as provided in § 54, no further action to award the contract shall be taken  
5480 unless there is a written determination that proceeding without delay is necessary to protect the public  
5481 interest or unless the bid or offer would expire.

5482 § 53. Contractual disputes. -

5483 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than  
5484 sixty days after final payment. However, written notice of the contractor's intention to file a claim shall  
5485 be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing  
5486 herein shall preclude a contract from requiring submission of an invoice for final payment within a  
5487 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of  
5488 claims shall not delay payment of amounts agreed due in the final payment.

5489 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.  
5490 Such procedure, which may be contained in the contract or may be specifically incorporated into the  
5491 contract by reference and made available to the contractor, shall establish a time limit for a final  
5492 decision in writing by the Institution. If the Institution has established administrative procedures  
5493 meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or  
5494 specifically incorporated in the contract by reference and made available to the contractor. The  
5495 Institution may require the submission of contractual claims pursuant to any contract to Alternative  
5496 Dispute Resolution ("ADR") as an administrative procedure.

5497 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these  
5498 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's  
5499 decision on the claim, unless the Institution fails to render such decision within the time specified in the  
5500 contract.

5501 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within  
5502 six months of the date of the final decision on the claim by the Institution by invoking administrative  
5503 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting  
5504 legal action as provided in § 54.

5505 § 54. Legal actions. -

5506 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from  
5507 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder  
5508 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging  
5509 that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an  
5510 honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the  
5511 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation  
5512 to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of  
5513 prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder,  
5514 having been previously determined by the Institution to be not responsible in accordance with § 4, is  
5515 found by the court to be a responsible bidder, the court may direct the Institution to award the contract  
5516 to such bidder in accordance with the requirements of this section and the Invitation to Bid.

5517 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the  
5518 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes  
5519 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary  
5520 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,  
5521 or the terms or conditions of the Invitation to Bid.

5522 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a  
5523 sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award  
5524 or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit  
5525 court challenging a proposed award or the award of a contract, which shall be reversed only if the  
5526 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,  
5527 but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable  
5528 state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

5529 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting  
5530 of reasonable security to protect the Institution.

5531 E. A contractor may bring an action involving a contract dispute with the Institution in the  
5532 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be  
5533 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of

5534 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of  
5535 Accounts.

5536 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards  
5537 of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or  
5538 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same  
5539 procurement transaction unless the Institution agrees otherwise.

5540 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a  
5541 contractor.

5542 § 55. Administrative appeals procedure. -

5543 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to  
5544 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from  
5545 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes  
5546 arising during the performance of a contract, or (v) any of these. Such administrative procedure may  
5547 include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a  
5548 disinterested person or panel, the opportunity to present pertinent information and the issuance of a  
5549 written decision containing findings of fact. The disinterested person or panel shall not be an employee  
5550 of the governmental entity against whom the claim has been filed. The findings of fact shall be final  
5551 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious;  
5552 (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the  
5553 findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14  
5554 of these Rules. No determination on an issue of law shall be final if appropriate legal action is  
5555 instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute  
5556 Resolution Council in establishing an Alternative Dispute Resolution ("ADR") procedure.

5557 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute  
5558 judicial review if such action is brought within thirty days of receipt of the written decision.

5559 § 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes  
5560 arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and  
5561 other alternative dispute resolution procedures. However, such procedures shall be nonbinding and  
5562 subject to § 2.2-514 of the Code of Virginia, as applicable.

5563 § 57. Ethics in public contracting. - The Institution and its governing body, officers and employees  
5564 shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement  
5565 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

5566

EXHIBIT K

5568

MANAGEMENT AGREEMENT  
BETWEEN

5570

THE COMMONWEALTH OF VIRGINIA

5571

AND

5572

THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

5573

AND

5574

THE VIRGINIA INSTITUTE OF MARINE SCIENCE

5575

PURSUANT TO

5576

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
OF 2005

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

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THE RECTOR AND VISITORS OF  
THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

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

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5591

I. PREAMBLE.

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5594

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

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SUBSTITUTE

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5595 higher education of the Commonwealth of Virginia and provides that upon becoming a Covered  
 5596 Institution, the College of William & Mary in Virginia shall have responsibility and accountability for  
 5597 human resources management for all College employees, defined in the Act as "Covered Employees,"  
 5598 who pursuant to subsection A of § 23-38.114 of the Act "are state employees of" the College.  
 5599 Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the  
 5600 Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act,  
 5601 Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies  
 5602 and procedures prescribed by the Virginia Department of Human Resource Management, provided that  
 5603 they may subsequently elect to become Participating Covered Employees. All Participating Covered  
 5604 Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title  
 5605 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel  
 5606 Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were subject to the state grievance  
 5607 procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the  
 5608 review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on  
 5609 merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either  
 5610 state- or College-sponsored benefit plans as described by the Management Agreement.

5611 The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law  
 5612 and constitute the human resources policies to be included in any human resources system adopted by  
 5613 the College for its employees.

5614 This Policy is intended to cover the authority that may be granted to the College pursuant to  
 5615 Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the  
 5616 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act  
 5617 and the College's Enabling Legislation, are not affected by this Policy.

## 5618 II. DEFINITIONS.

5619 As used in this policy, the following terms shall have the following meanings, unless the context  
 5620 requires otherwise:

5621 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
 5622 Chapter 4.10 of Title 23 of the Code of Virginia.

5623 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William &  
 5624 Mary and the Virginia Institute of Marine Science.

5625 "Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29  
 5626 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by  
 5627 the Virginia Department of Human Resource Management and who are not Participating Covered  
 5628 Employees.

5629 "College" means the College of William and Mary in Virginia, formerly known as agency 204 and  
 5630 the Virginia Institute of Marine Science, formerly known as agency 268.

5631 "College employee" means a Covered Employee.

5632 "College Human Resources System" means the human resources system for College employees as  
 5633 provided for herein.

5634 "Covered Employee" means any person who is employed by the College on either a salaried or  
 5635 non-salaried (wage) basis.

5636 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement  
 5637 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that  
 5638 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of  
 5639 Subchapter 3 of the Act.

5640 "Employee" means Covered Employee unless the context clearly indicates otherwise.

5641 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
 5642 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
 5643 missions of the College.

5644 "Effective Date" means the effective date of the initial Management Agreement between the College  
 5645 and the Commonwealth.

5646 "Governing Law" means the Act and the College's Enabling Legislation.

5647 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act  
 5648 between the College and the Commonwealth.

5649 "Participating Covered Employee" means (i) all salaried nonfaculty College employees who were  
 5650 employed as of the day prior to the Effective Date of the College's initial Management Agreement with  
 5651 the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be governed  
 5652 by such human resources program or programs, plans, policies, and procedures established by the  
 5653 College, (ii) all salaried nonfaculty College employees who are employed by the College on or after the  
 5654 Effective Date of the initial Management Agreement between the College and the Commonwealth, (iii)  
 5655 all non-salaried nonfaculty College employees without regard to when they were hired, (iv) all faculty  
 5656 College employees without regard to when they were hired.

5657 "Systems" means collectively the College Human Resources System that is in effect from time to time.  
 5658 III. SCOPE AND PURPOSE OF COLLEGE HUMAN RESOURCES POLICIES.

5659 The College has had human resources system autonomy through decentralization for its employees  
 5660 for some time. For example, general faculty at the College are expressly exempt from the Virginia  
 5661 Personnel Act. The College has had decentralization in most human resources functions and activities  
 5662 since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the  
 5663 administration of hiring, classification, and promotion practices.

5664 The Act extends and reinforces the human resources autonomy previously granted to the College.  
 5665 This Policy therefore is adopted by the Board of Visitors to enable the College to develop, adopt, and  
 5666 have in place by or after the Effective Date of its initial Management Agreement with the  
 5667 Commonwealth, a human resources system or systems for all College employees. On that Effective  
 5668 Date, and until changed by the College or unless otherwise specified in this Policy, the systems for  
 5669 College employees shall be the same systems applicable to those employees in effect immediately prior  
 5670 to that Effective Date.

5671 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

5672 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
 5673 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
 5674 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
 5675 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
 5676 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,  
 5677 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
 5678 implementation of those duties and responsibilities pursuant to the College's usual delegation policies  
 5679 and procedures.

5680 V. COLLEGE OF WILLIAM & MARY HUMAN RESOURCES SYSTEMS.

5681 A. Adoption and Implementation of College Human Resources Systems.

5682 The President is hereby authorized to adopt and implement human resources systems for employees  
 5683 of the College that are consistent with the Governing Law, other applicable provisions of law, these  
 5684 College human resources policies for College employees, and any other human resources policies  
 5685 adopted by the Department of Human Resource Management or the Board of Visitors for College  
 5686 personnel, unless College employees are exempted from those other human resources policies by law or  
 5687 policy. The College Human Resources Systems shall include a delegation of personnel authority to  
 5688 appropriate College officials responsible for overseeing and implementing the College Human Resources  
 5689 Systems, including a grant of authority to such officials to engage in further delegation of authority as  
 5690 the President or his designee deems appropriate.

5691 The College commits to regularly engage employees in appropriate discussions and to receive  
 5692 employee input as the new College Human Resources Systems are developed. The College will regularly  
 5693 communicate the details of new proposals to all employees who are eligible to participate in the College  
 5694 Human Resources System through written communication, open meetings, and website postings as  
 5695 appropriate, so that employees will have full information that will help them evaluate the merits of the  
 5696 new human resource system compared to the then-current State human resource system.

5697 Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and  
 5698 until amended as described below, the College's human resources systems shall consist of the following:

5699 1. the current "College of William and Mary Faculty Handbook," as it is posted on the Provost's  
 5700 website, <http://www.wm.edu/provost/index.php>, and periodically amended; and

5701 2. the current human resources system for Classified Employees in the College as posted on the  
 5702 Virginia Department of Human Resource Management website at  
 5703 <http://www.dhrm.state.va.us/hrpolicy/policy.html>; and

5704 3. the human resources system for Participating Covered Employees, which shall include  
 5705 non-salaried (wage) employees, as posted on the College Human Resources web site,  
 5706 <http://www.wm.edu/hr.html> and periodically amended.

5707 All the systems describe above, except the system described in paragraph 3, may be amended by the  
 5708 President, consistent with these human resources policies. The system described in paragraph 3 may be  
 5709 amended only by the State.

5710 B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human  
 5711 Resources Policies.

5712 The President, or designee, shall take all necessary and reasonable steps to assure (i) that the  
 5713 College officials who develop, implement and administer the College Human Resources Systems  
 5714 authorized by Governing Law and these human resources policies are knowledgeable regarding the  
 5715 requirements of the Governing Law, other applicable provisions of law, these College human resources  
 5716 policies, and other applicable Board of Visitors' human resources policies affecting College employees,  
 5717 and (ii) that compliance with such laws and human resources policies is achieved.

**5718 VI. HUMAN RESOURCES POLICIES.**

**5719** *The College Human Resources Systems adopted by the College pursuant to Governing Law and this*  
**5720** *Policy, as set forth in Section V above, shall embody the following human resources policies and*  
**5721** *principles:*

**5722** *A. Election by College Salaried Nonfaculty Employees.*

**5723** *Upon the adoption by the College of a College Human Resources System, each salaried nonfaculty*  
**5724** *College employee who was in the employment of the College, as of the day prior to the Effective Date*  
**5725** *of its initial Management Agreement with the Commonwealth shall be permitted to elect to participate in*  
**5726** *and be governed by either (i) the State human resources program set forth in Chapters 28 (§ 2.2-2800*  
**5727** *et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia and administered by the*  
**5728** *Department of Human Resource Management, or (ii) the College Human Resources System, as*  
**5729** *appropriate. A salaried nonfaculty College employee who elects to continue to be governed by the State*  
**5730** *human resources program described above shall continue to be governed by all State human resources*  
**5731** *and benefit plans, programs, policies and procedures that apply to and govern State employees. A*  
**5732** *salaried nonfaculty College employee who elects to participate in and be governed by the College*  
**5733** *Human Resources System, by that election, shall be deemed to have elected to be eligible to participate*  
**5734** *in and to be governed by the College human resources program, authorized alternative insurance, and*  
**5735** *severance plans, programs, policies and procedures that are or may be adopted by the College as part*  
**5736** *of that College Human Resources System.*

**5737** *The College shall provide each of its salaried nonfaculty College employees who was in the*  
**5738** *employment of the College as of the day prior to the Effective Date of the College's initial Management*  
**5739** *Agreement with the Commonwealth at least 90 days after the date on which the College Human*  
**5740** *Resources System becomes effective for that College employee's classification of employees to make the*  
**5741** *election required by the prior paragraph. If such a salaried nonfaculty College employee does not make*  
**5742** *an election by the end of that specified election period, that College employee shall be deemed not to*  
**5743** *have elected to participate in the College Human Resources System. If such a salaried nonfaculty*  
**5744** *College employee elects to participate in the College Human Resources System, that election shall be*  
**5745** *irrevocable. At least every two years, the College shall offer to salaried nonfaculty College employees*  
**5746** *who have elected to continue to participate in the state human resources program set forth in Chapters*  
**5747** *28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 an opportunity to elect to participate in*  
**5748** *the College Human Resources System, provided that, each time prior to offering such opportunity to*  
**5749** *such salaried nonfaculty College employees, and at least once every two years after the effective date of*  
**5750** *the College Human Resources System, the College shall make available to each of its salaried*  
**5751** *nonfaculty College employees a comparison of its human resources program for that classification of*  
**5752** *salaried nonfaculty College employee with the State human resources program for comparable State*  
**5753** *employees, including but not limited to a comparability assessment of compensation and benefits. A copy*  
**5754** *of the human resources program comparison shall be provided to the Department of Human Resource*  
**5755** *Management.*

**5756** *B. Classification and Compensation.*

**5757** *General. The Systems shall include classification and compensation plans that are fair and*  
**5758** *reasonable, and are based on the availability of College financial resources. The plans adopted by the*  
**5759** *College Participating Covered Employees shall be independent of, and need not be based on, the*  
**5760** *classification and compensation plans of the Commonwealth, do not require the approval of any State*  
**5761** *agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth*  
**5762** *in paragraph 3 below. The College shall provide information on its classification and compensation*  
**5763** *plans to all College employees. The plans applicable to Participating Covered Employees may or may*  
**5764** *not include changes in classification or compensation announced by the Commonwealth depending on*  
**5765** *such factors as the availability of necessary financial resources to fund any such changes, and subject*  
**5766** *to the review and approval by the Board of Visitors of any major changes in the College's compensation*  
**5767** *plans.*

**5768** *Classification Plan. The Systems shall include one or more classification plans for College*  
**5769** *employees that classify positions according to job responsibilities and qualifications. On the Effective*  
**5770** *Date of the College's initial Management Agreement with the Commonwealth, and until changed by the*  
**5771** *College, the classification plans shall be the same plans that are in effect for each group of employees*  
**5772** *immediately prior to that Effective Date.*

**5773** *Compensation Plan. The Systems shall include one or more compensation plans for each College*  
**5774** *employee classification or group. On the Effective Date of the College's initial Management Agreement*  
**5775** *with the Commonwealth, and until changed by the Department of Human Resource Management, the*  
**5776** *compensation plan for Classified Employees in the College shall be the compensation plan in effect*  
**5777** *immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan.*  
**5778** *On that Effective Date, and until changed by the College, the compensation plan or plans for all*  
**5779** *Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to*

5780 that Effective Date. The College may adopt one or more compensation plans for Participating Covered  
5781 Employees that are non-graded plan(s) based on internal and external market data and other relevant  
5782 factors to be determined annually. Any major change in compensation plans for Participating Covered  
5783 Employees shall be reviewed and approved by the Board of Visitors before that change becomes  
5784 effective. Any change recommended in the compensation plans may take into account the prevailing  
5785 rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the  
5786 competency and skills of the individual employee, internal equity, and the availability of necessary  
5787 financial resources to fund the proposed change. The compensation payable to College employees shall  
5788 be authorized and approved only by designated College officers delegated such authority by the College,  
5789 and shall be consistent with the approved compensation plan for the relevant position or classification.  
5790 Further approval by any other State Agency, governmental body or officer is not required for setting,  
5791 adjusting or approving the compensation payable to individual Participating Covered Employees.

5792 Wages. The Systems shall include policies and procedures for the authorization, computation and  
5793 payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and  
5794 call back, and for the payment of hourly employees.

5795 Payment of Compensation. The Systems shall include policies and procedures for paying  
5796 compensation to employees, including the establishment of one or more payday schedules.

5797 Work Schedule and Workweek. The Systems shall include policies and procedures for the  
5798 establishment of, and modifications to, work schedules and workweeks for all College employees,  
5799 including alternative work schedules and sites, and telecommuting policies and procedures.

5800 Other Classification and Compensation Policies and Procedures. The Systems may include any other  
5801 reasonable classification and compensation policies and procedures the President deems appropriate.

5802 C. Benefits.

5803 The Systems shall provide fringe benefits to all benefits eligible employees, including retirement  
5804 benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The  
5805 benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may  
5806 include an optional benefits plan for benefits eligible employees, including additional insurance  
5807 coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance  
5808 programs, employee intramural and recreational passes, and other wellness programs. As provided in  
5809 §23-38.119.B and C of the Act, the College may require Participating Covered Employees to pay all or  
5810 a portion of the cost of group life, disability and accidental death and dismemberment insurance, which  
5811 may be collected through a payroll deduction program. Participating Covered Employees shall not be  
5812 required to present evidence of insurability for basic group life insurance coverage. The Board of  
5813 Visitors may elect to provide benefits through Virginia Retirement System group insurance programs  
5814 under the terms of and to the extent allowed by §23-38.119B and D of the Act or any other provision of  
5815 law.

5816 Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until  
5817 that section is amended, the state retirement system, state health insurance program, and state workers'  
5818 compensation coverage program as they may be amended from time to time, shall continue to apply to  
5819 and govern all eligible College employees.

5820 The Systems may provide different benefits plans for reasonably different groups or classifications of  
5821 employees, and may provide benefits to part-time employees. On the Effective Date of the College's  
5822 initial Management Agreement with the Commonwealth, and until changed by the appropriate governing  
5823 authority, the benefits plans provided by the College to Classified Employees and Participating Covered  
5824 Employees shall be the benefits plans provided to that group or classification as of the date immediately  
5825 prior to that Effective Date. On or after that Effective Date, alternative College group life, accidental  
5826 death and dismemberment, and short- and long-term disability plans may be provided to eligible  
5827 Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution  
5828 of participation agreements as provided in subsections B and C of §23-38.119 of the Act, they may be  
5829 provided by the appropriate State programs, but no contributions to the state programs by the College  
5830 shall be required for Participating Covered Employees who do not participate in the programs. Subject  
5831 to the provisions of the Act, any new plans, programs and material changes permitted under current law  
5832 in College employee benefit plans, other than Classified Employee benefit plans, shall be approved by  
5833 the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the  
5834 limit permitted by the Code of Virginia based on available resources, and the authority to implement  
5835 cafeteria-style benefits for College employees other than Classified Employees.

5836 Insurance and all proceeds therefrom provided pursuant to §23-38.119 of the Act shall be exempt  
5837 from legal process and may be subject to voluntary assignment as provided in subsection A of  
5838 §23-38.119.

5839 D. Employee Relations.

5840 General. The Systems shall contain provisions that protect the rights and privileges of College

5841 employees consistent with sound management principles and fair employment practice law.  
5842 Employee Safety and Health. The Systems shall contain provisions that promote workplace safety  
5843 compliance with applicable law and regulations.  
5844 Employee Work Environment. The Systems shall promote a work environment that is conducive to  
5845 the performance of job duties, and free from intimidation or coercion in violation of State or federal  
5846 law, including sexual harassment or other discrimination.  
5847 Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to  
5848 policies and procedures for awarding, honoring, or otherwise recognizing College employees, including  
5849 but not limited to those who have performed particularly meritorious service for the College, have been  
5850 employed by the College for specified periods of time, or have retired from the College after lengthy  
5851 service.  
5852 Counseling Services. The Systems shall provide counseling services through the State's Employee  
5853 Assistance Program or a College Employee Assistance Program to any eligible College employee  
5854 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the  
5855 circumstances under which the time necessary to participate in such counseling may be granted.  
5856 Unemployment Compensation. The Systems shall ensure that College employees receive the full  
5857 unemployment compensation benefits to which they are legally entitled, and that the College's liability is  
5858 limited to legitimate claims for such benefits.  
5859 Workers' Compensation. The Systems shall ensure that College employees have workers'  
5860 compensation benefits to which they are legally entitled pursuant to the State Employees Workers'  
5861 Compensation Program administered by the Department of Human Resource Management.  
5862 8. Performance Planning and Evaluation. The Systems shall include one or more performance  
5863 planning and evaluation processes for College employees that (i) establish and communicate the  
5864 College's performance expectations, (ii) help develop productive working relationships, (iii) allow  
5865 employees to present their views concerning their performance, (iv) identify areas for training or  
5866 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify  
5867 how superlative or inadequate performance shall be addressed, and (vii) ensure that all College  
5868 employees are provided relevant information on the evaluation process. The Systems may include  
5869 separate performance and evaluation processes for reasonably distinguishable groups of College  
5870 employees. On the Effective Date of the College's initial Management Agreement with the  
5871 Commonwealth, the existing merit-based performance management system for faculty shall continue,  
5872 until amended by the College. On or after that Effective Date, College nonfaculty salaried Participating  
5873 Covered Employees may be subject to a variable merit-based performance management system.  
5874 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all  
5875 employees and to ensure safe, efficient College operations and compliance with the law, the Systems  
5876 shall establish rules of personal conduct and standards of acceptable work performance for College  
5877 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for  
5878 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or  
5879 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more  
5880 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action  
5881 to employee conduct occurring only when employees are at work or are otherwise representing the  
5882 College in an official or work-related capacity, unless otherwise specifically provided by the policies of  
5883 the Systems or other applicable law. The Systems may provide for a probationary period for new and  
5884 re-employed College salaried nonfaculty employees, during which period the policies for corrective  
5885 discipline shall not be applicable and the employee may not use the grievance procedure set forth in the  
5886 next paragraph. The Systems may include separate rules of personal conduct and standards of  
5887 acceptable work performance and policies for corrective discipline for reasonably distinguishable groups  
5888 of College employees.  
5889 10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to  
5890 resolve employment-related problems and complaints informally, and shall be permitted to discuss their  
5891 concerns freely and without fear of retaliation with immediate supervisors and management. In the  
5892 event that such problems cannot be resolved informally, all salaried nonfaculty College employees,  
5893 regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in  
5894 § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of  
5895 the Code of Virginia, to the extent it was applicable to their classification of employees prior to the  
5896 Effective Date of the College's initial Management Agreement with the Commonwealth. On that  
5897 Effective Date, and until changed by the College, the faculty grievance procedures in effect immediately  
5898 prior to the Effective Date shall continue.  
5899 11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the  
5900 Classified Employee may file a complaint with the Department of Human Resource Management Office  
5901 of Equal Employment Services. All Covered Employees and applicants for employment after the  
5902 Effective Date of the College's initial Management Agreement with the Commonwealth shall file a

5903 complaint with the appropriate College office or with the appropriate federal agencies.

5904 12. *Layoff Policy.* The Systems shall include one or more layoff policies for salaried College  
 5905 employees who lose their jobs for reasons other than their job performance or conduct, such as a  
 5906 reduction in force or reorganization at the College. These College layoff policies shall govern such  
 5907 issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)  
 5908 notice to employees affected by a layoff, (iv) placement options within the College or its respective major  
 5909 divisions and within other parts of the College, (v) the preferential employment rights, if any, of various  
 5910 College employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling  
 5911 employees. In accordance with the terms of the Act, College employees who: (i) were employed prior to  
 5912 the Effective Date of the College's initial Management Agreement with the Commonwealth, (ii) would  
 5913 otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by  
 5914 the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in  
 5915 force shall have the same preferential hiring rights with State agencies and other executive branch  
 5916 institutions as Classified Employees have under § 2.2-3201 of the Code of Virginia. Conversely, the  
 5917 College shall recognize the hiring preference conferred by § 2.2-3201 on State employees who were  
 5918 hired by a State agency or executive branch institution before the Effective Date of the College's initial  
 5919 Management Agreement with the Commonwealth and who were separated after that date by that State  
 5920 agency or executive branch institution because of a reduction in workforce. If the College has adopted  
 5921 a classification system pursuant to § 23-38.116 of the Act that differs from the classification system  
 5922 administered by the Department of Human Resource Management, the College shall classify the  
 5923 separated employee according to its classification system and shall place the separated employee  
 5924 appropriately. The College may include separate policies for reasonably distinguishable groups of  
 5925 College employees. On or after the Effective Date of the College's initial Management Agreement with  
 5926 the Commonwealth, all employees from other State agencies and executive branch institutions who are  
 5927 placed by the College under the provisions of the State Layoff Policy shall be Participating Covered  
 5928 Employees.

5929 13. *Severance Benefits.* In accordance with the terms of the Act, the College shall adopt severance  
 5930 policies for salaried Participating Covered Employees who are involuntarily separated for reasons  
 5931 unrelated to performance or conduct. The terms and conditions of such policies shall be determined by  
 5932 the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior  
 5933 to the Effective Date of the College's initial Management Agreement with the Commonwealth shall be  
 5934 covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of  
 5935 Virginia. The College and the Board of the Virginia Retirement System may negotiate a formula  
 5936 according to which cash severance benefits may be converted to years of age or creditable service for  
 5937 Participating Covered Employees who participate in the Virginia Retirement System. An employee's  
 5938 becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in  
 5939 force to which severance or Workforce Transition Act policies would apply.

5940 14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i)  
 5941 establish and maintain a work environment at the College that is free from the adverse effect of alcohol  
 5942 and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the  
 5943 College of William & Mary Alcohol and Other Drugs Policy, (iii) describe the range of authorized  
 5944 disciplinary action, including termination where appropriate, for violations of such policies and  
 5945 procedures, and the process to be followed in taking such disciplinary action, (iv) provide College  
 5946 employees access to assistance and treatment for problems involving alcohol and other drugs, (v)  
 5947 provide for the circumstances under which employees are required to report certain violations of the  
 5948 policies and procedures to their supervisor, and the College is required to report those violations to a  
 5949 federal contracting or granting agency, (vi) describe the circumstances under which personnel records  
 5950 of actions taken under the College's alcohol and other drugs policy shall not be kept confidential, and  
 5951 (vii) provide notice to College employees of the scope and content of the College alcohol and other  
 5952 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal  
 5953 Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment,  
 5954 reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing  
 5955 for College positions that are particularly safety sensitive, such as those requiring a Commercial  
 5956 Driver's License.

5957 15. *Background Checks.* The Systems shall include a process for conducting background checks,  
 5958 which may include but is not limited to reference checks, educational/ professional credentialing checks,  
 5959 and conviction and driver's records checks on applicants for full-time or part-time positions at the  
 5960 College, and for addressing situations where employees do not disclose a conviction on their application  
 5961 or otherwise falsify their application with regard to information concerning their education/professional  
 5962 credential and/or prior convictions.

5963 16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other

5964 reasonable employee relations policies or procedures that the President deems appropriate, which may  
5965 include, but are not limited to, policies or procedures relating to orientation programs for new or  
5966 re-employed College employees, an employee suggestion program, the responsibility of College  
5967 employees for property placed in their charge, work breaks, inclement weather and emergencies, and  
5968 employment outside the College.

5969 E. Leave and Release Time.

5970 The Systems shall include policies and procedures regarding leave for eligible employees. The  
5971 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal  
5972 uses. The Systems may provide for release time for such matters as the donation of blood, participation  
5973 in an employee assistance program and other appropriate employment-related matters. On or after the  
5974 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is  
5975 adopted by the appropriate authority, the College shall continue to provide leave and release time to  
5976 Participating Covered Employees in accordance with the leave and release time policies and procedures  
5977 applicable to each classification of employees prior to that Effective Date. On or after that Effective  
5978 Date, the College may provide an alternative leave and release time system for salaried nonfaculty  
5979 Participating Covered Employees.

5980 F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.

5981 1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and  
5982 procedures to ensure that all aspects of human resources management, including the employment of  
5983 College employees, meet all requirements of federal and state law, and of the relevant policies of the  
5984 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

5985 Employment. The Systems shall include policies and procedures for the recruitment, selection and  
5986 hiring of College employees that are based on merit and fitness, including where appropriate a  
5987 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference  
5988 checks and conviction record checks. On and after the Effective Date of its initial Management  
5989 Agreement with the Commonwealth, the College shall post all salaried nonfaculty position vacancies  
5990 through the College's job posting system, the Commonwealth's job posting system, and other external  
5991 media as appropriate. The Systems shall establish designated veterans' re-employment rights in  
5992 accordance with applicable law.

5993 In order to encourage employees to attain the highest level positions for which they are qualified,  
5994 and to compensate employees for accepting positions of increased value and responsibility, the Systems  
5995 shall include policies and procedures governing the promotion of employees, including the effect of  
5996 promotion on an employee's compensation.

5997 On or after the Effective Date of the College's initial Management Agreement with the  
5998 Commonwealth, all employees hired from other state agencies shall be Participating Covered  
5999 Employees. College Classified Employees who change jobs within the College through a competitive  
6000 employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified  
6001 Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a  
6002 Participating Covered Employee, that decision shall be irrevocable.

6003 Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice,  
6004 where appropriate, of a decision either by the employee or by the College to separate the employee  
6005 from the College in accordance with policies governing performance, conduct, or layoff.

6006 G. Information Systems.

6007 The College shall provide an electronic file transfer of information on all salaried College employees  
6008 and shall continue to provide the Employee Position Reports to meet the human resources reporting  
6009 requirements specified by law or by request of the Governor or the General Assembly, unless the  
6010 College is specifically exempted from those requirements. The College shall conduct assessments to  
6011 demonstrate its accountability for human resources practices that comply with laws and regulations.  
6012 The Department of Human Resource Management and the College have entered into a Memorandum of  
6013 Understanding, attached hereto as Attachment 2, which may be amended from time to time by  
6014 agreement of the parties, regarding the specific data and reporting requirements. The College shall be  
6015 accountable for ensuring the timeliness and integrity of the data transmitted to the Department of  
6016 Human Resources Management.

6017 VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND  
6018 OTHER BOARD OF VISITORS' POLICIES AFFECTING COLLEGE PERSONNEL.

6019 On and after the Effective Date of its initial Management Agreement with the Commonwealth,  
6020 College employees shall be subject to the terms and conditions of the Act and the Management  
6021 Agreement between the Commonwealth and the College. Classified Employees shall continue to be  
6022 subject to the human resources policies and exceptions to those policies adopted or approved by the  
6023 Department of Human Resource Management.

6024 In addition, all College employees also shall remain subject to any other human resources policies  
6025 adopted by the Board of Visitors applicable to College personnel unless College employees or a subset

6026 thereof are specifically exempted from those other human resources policies either by those other  
6027 policies or by this Policy.

6028

6029

ATTACHMENT 2

6030

6031

Memorandum of Understanding

6032

Between the The College of William and Mary and the

6033

Department of Human Resources Management Regarding

6034

The Reporting of Human Resources Management Data

6035

This Memorandum of Understanding, which may be amended from time to time by the agreement of  
6036 all parties, is an attachment to the Policy Governing Human Resources for Participating Covered  
6037 Employees and Other College Employees pursuant to the Restructured Higher Education Financial and  
6038 Administrative Operations Act of 2005, and is hereby entered into between the College of William and  
6039 Mary and the Department of Human Resource Management (DHRM).

6040

I. This document outlines the provisions for information management pertaining to human resources  
6041 data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting  
6042 requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so  
6043 through efficient and cost-effective methods.

6044

1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will  
6045 be transmitted through an electronic file transfer to update DHRM's warehouse.

6046

a. The College will provide a flat file of designated personnel data. For "Classified Employees", the  
6047 data provided will match DHRM's data values for the designated fields. For salaried "Participating  
6048 Covered Employees", the data provided will include the University's data values for the designated  
6049 fields. The College will provide a data dictionary to DHRM. The file of designated data will be  
6050 specifically described by an addendum to this Memorandum upon the agreement of the University and  
6051 DHRM.

6052

b. The College will provide a second flat file of salaried personnel actions for "Classified  
6053 Employees" and salaried "Participating Covered Employees", such as promotions, separations, and  
6054 salary adjustments. The file of relevant personnel actions and designated data to be provided for each  
6055 action will be specifically described by an addendum to this Memorandum upon the agreement of the  
6056 University and DHRM.

6057

2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact  
6058 analyses of employment and compensation actions that are part of the AAP, as demonstration of the  
6059 College's compliance with relevant federal and state employment laws and regulations.

6060

3. The College may key data into the Benefits Enrollment System or provide a batch file, or  
6061 employees may use Employee Direct (employee self service).

6062

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

6063

a. Monthly Employment Position Report

6064

b. Annual report on salaried, wage, and contract employees

6065

The undersigned hereby agree to the provisions contained in the MOU.

6066

APPROVALS:

6067

The College of William and Mary:

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6069

By:  
Vice President for Administration

Date

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6071

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Department of Human Resources Management:

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By:  
Director, Department of Human Resources Management

Date

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EXHIBIT L

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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 COLLEGE OF WILLIAM AND MARY

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PURSUANT TO

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THE RESTRUCTURED HIGHER EDUCATION

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HOUSE  
SUBSTITUTE

SB675H1

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

6149 *the duties and responsibilities set forth in this Policy to a person or persons within the College, who,*  
 6150 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
 6151 *implementation of those duties and responsibilities pursuant to the College's usual delegation policies*  
 6152 *and procedures.*

6153 **V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.**

6154 *The President, or designee, shall continue to be authorized by the Board to maintain existing and*  
 6155 *implement new policies governing the management of College financial resources. These policies shall*  
 6156 *continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency*  
 6157 *with the current accounting principles employed by the Commonwealth, including the use of fund*  
 6158 *accounting principles, with regard to the establishment of the underlying accounting records of the*  
 6159 *College and the allocation and utilization of resources within the accounting system, including the*  
 6160 *relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with*  
 6161 *regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide*  
 6162 *adequate risk management and internal controls to protect and safeguard all financial resources,*  
 6163 *including moneys transferred to the College pursuant to a general fund appropriation, and ensure*  
 6164 *compliance with the requirements of the Appropriation Act.*

6165 *The financial management system shall continue to include a financial reporting system to satisfy*  
 6166 *both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,*  
 6167 *as specified in the related State Comptroller's Directives, and the College's separately audited financial*  
 6168 *statements. To ensure observance of limitations and restrictions placed on the use of the resources*  
 6169 *available to the College, the accounting and bookkeeping system of the College shall continue to be*  
 6170 *maintained in accordance with the principles prescribed for governmental organizations by the*  
 6171 *Governmental Accounting Standards Board.*

6172 *In addition, the financial management system shall continue to provide financial reporting for the*  
 6173 *President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the*  
 6174 *financial operations of the College. Upon the Effective Date of the initial Management Agreement*  
 6175 *between the College and the Commonwealth, except for the recordation of daily revenue deposits of*  
 6176 *State funds as specified in Section VII below, the College shall not be required to record its financial*  
 6177 *transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the*  
 6178 *current monthly interfacing with CARS , or be a part of any subsequent Commonwealth financial*  
 6179 *systems that replace CARS or are in addition to CARS, but shall have its own financial reporting*  
 6180 *system. The College's financial reporting system shall provide (i) summary monthly reports for State*  
 6181 *agencies including, but not limited to, the Department of Accounts, the Department of Planning and*  
 6182 *Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the*  
 6183 *State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on*  
 6184 *Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule,*  
 6185 *and using such format that is compatible with the Commonwealth's accounting system, as may be*  
 6186 *requested by the requesting State agency, and (ii) such other special reports as may be requested from*  
 6187 *time to time.*

6188 **VI. FINANCIAL MANAGEMENT POLICIES.**

6189 *The President, or designee, shall create and implement any and all financial management policies*  
 6190 *necessary to establish a financial management system with adequate risk management and internal*  
 6191 *control processes and procedures for the effective protection and management of all College financial*  
 6192 *resources. Such policies will not address the underlying accounting principles and policies employed by*  
 6193 *the Commonwealth and the College, but rather will focus on the internal operations of the College's*  
 6194 *financial management. These policies shall include, but need not be limited to, the development of a*  
 6195 *tailored set of finance and accounting practices that seek to support the College's specific business and*  
 6196 *administrative operating environment in order to improve the efficiency and effectiveness of its business*  
 6197 *and administrative functions. In general, the system of independent financial management policies shall*  
 6198 *be guided by the general principles contained in the Commonwealth's Accounting Policies and*  
 6199 *Procedures such as establishing strong risk management and internal accounting controls to ensure*  
 6200 *College financial resources are properly safeguarded and that appropriate stewardship of public funds*  
 6201 *is obtained through management's oversight of the effective and efficient use of such funds in the*  
 6202 *performance of College programs.*

6203 *Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College*  
 6204 *shall continue to follow the Commonwealth's accounting policies until such time as specific alternate*  
 6205 *policies can be developed, approved and implemented. Such alternate policies shall include applicable*  
 6206 *accountability measures and shall be submitted to the State Comptroller for review and comment before*  
 6207 *they are implemented by the College.*

6208 **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

6209 *Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the*

6210 College shall have the power and authority to manage all monies received by it. All State general funds  
6211 to be allocated to the College shall remain subject to the appropriations process.

6212 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher  
6213 Education for Virginia ("SCHEV") annually shall assess and certify to the Governor and General  
6214 Assembly the degree to which each public institution of higher education of the Commonwealth has met  
6215 the financial and administrative management and educational-related performance benchmarks called  
6216 for by that subsection and approved as part of the Appropriation Act then in effect for the State goals  
6217 and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to  
6218 § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full  
6219 fiscal year for which the financial and administrative management and educational-related performance  
6220 benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for  
6221 all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has  
6222 been certified during the fiscal year by SCHEV as having met such institutional performance  
6223 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain  
6224 financial incentives, including interest on the tuition and fees and other non-general fund Education and  
6225 General Revenues deposited into the State Treasury by the public institution of higher education.

6226 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for  
6227 which it has received such certification from SCHEV, the College is authorized to hold and invest  
6228 tuition, Educational and General ("E&G") fees, research and sponsored program funds, auxiliary  
6229 enterprise funds, and all other non-general fund revenues subject to the following requirements:

6230 i) The College shall deposit such funds in the State Treasury pursuant to the State process in place  
6231 at the time of such deposit;

6232 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section  
6233 IX below;

6234 iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold  
6235 in escrow all interest earned on the College's tuition and fees and other non-general fund Educational  
6236 and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia  
6237 certification that the College has met such institutional performance benchmarks and the conditions  
6238 prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a  
6239 non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year,  
6240 equivalent to the amount deposited in the escrow account as the financial incentive provided in  
6241 subdivision 1 of § 2.2-5005, after which time the College may expend the funds for purposes related to  
6242 its mission. If public institutions of higher education of the Commonwealth are permitted, or the College  
6243 in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the  
6244 Commonwealth would have earned on such funds and research funds, then this paragraph  
6245 shall not apply to such interest on such funds, and such interest shall not be held in escrow.

6246 iv) If in any given year the College does not receive the certification from the State Council of  
6247 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by  
6248 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall  
6249 transfer to the general fund the balance in the escrow account as of June 30 of that year.

6250 v) Beginning on the effective date of its initial Management Agreement with the College until the  
6251 beginning of the first fiscal year following the fiscal year for which it has received the required  
6252 certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds  
6253 with the State Treasurer by the same process that it would have been required to use if it had not  
6254 entered into a Management Agreement with the Commonwealth.

6255 vi) On the first business day of the first fiscal year following the fiscal year for which it has  
6256 received the required certification from SCHEV, the College may draw down all cash balances held by  
6257 the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored  
6258 programs, auxiliary enterprises, and all other non-general fund revenues.

6259 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay  
6260 these funds to the College as specified in Section IX below.

6261 The College also shall have sum sufficient appropriation authority for all non-general funds as  
6262 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations  
6263 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general  
6264 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of  
6265 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be  
6266 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of  
6267 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to  
6268 the Department of Planning and Budget by July 31 of the subsequent fiscal year.

6269 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other  
6270 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income  
6271 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the

6272 intent of the Commonwealth and the College that the College shall be exempt from the revenue  
 6273 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,  
 6274 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the  
 6275 College that the College shall be entitled to retain non-general fund savings generated from changes in  
 6276 Commonwealth rates and charges, including but not limited to health, life, and disability insurance  
 6277 rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting  
 6278 such savings back to the Commonwealth. This financial resource policy assists the College by providing  
 6279 the framework for retaining and managing non-general funds, for the receipt of general funds, and for  
 6280 the use and stewardship of all these funds.

6281 The President, or designee, shall continue to provide oversight of the College's cash management  
 6282 system which is the framework for the retention of non-general funds. The Internal Audit Department of  
 6283 the College shall periodically audit the College's cash management system in accordance with  
 6284 appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors.  
 6285 Additional oversight shall continue to be provided through the annual audit and assessment of internal  
 6286 controls performed by the Auditor of Public Accounts.

6287 For the receipt of general and non-general funds, the College shall conform to the Security for  
 6288 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently  
 6289 exists and from time to time may be amended.

6290 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

6291 The President, or designee, shall continue to be authorized to create and implement any and all  
 6292 Accounts Receivable Management and Collection policies as part of a system for the management of  
 6293 College financial resources. The policies shall be guided by the requirements of the Virginia Debt  
 6294 Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia such that the College shall take  
 6295 all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

6296 These shall include, but not be limited to, establishing the criteria for granting credit to College  
 6297 customers; establishing the nature and timing of collection procedures within the above general  
 6298 principles; and the independent authority to select and contract with collection agencies and, after  
 6299 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all  
 6300 collection activities for all College accounts receivable such as reporting delinquent accounts to credit  
 6301 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In  
 6302 accordance with sound collection activities, the College shall continue to utilize the Commonwealth's  
 6303 Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax  
 6304 Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly  
 6305 summary report of receivables to the Department of Accounts in accordance with the reporting  
 6306 procedures established pursuant to the Virginia Debt Collection Act.

6307 IX. DISBURSEMENT MANAGEMENT.

6308 The President, or designee, shall continue to be authorized to create and implement any and all  
 6309 disbursement policies as part of a system for the management of College financial resources. The  
 6310 disbursement management policies shall continue to define the appropriate and reasonable uses of all  
 6311 funds, from whatever source derived, in the execution of the College's operations. These policies also  
 6312 shall continue to address the timing of appropriate and reasonable disbursements consistent with the  
 6313 Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's  
 6314 mission, including travel-related disbursements. Further, the College's disbursement policy shall  
 6315 continue to provide for the mechanisms by which payments are made including the use of charge cards,  
 6316 warrants, and electronic payments. Since the College no longer will interface to the CARS system or  
 6317 any replacement for the CARS system for disbursements, the College shall establish its own mechanisms  
 6318 for electronic payments to vendors through Electronic Data Interchange ("EDI") or similar process and  
 6319 payments to the Commonwealth's Debt Set Off Collection Programs.

6320 Beginning with the fiscal year after the first fiscal year for which it first receives the required  
 6321 certification from SCHEV, the College may draw down its general fund appropriations (subject to  
 6322 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.  
 6323 Such funds shall be available to the College for disbursement as provided in the then-current rules of  
 6324 the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in  
 6325 accordance with the following schedule:

6326 i) the College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for  
 6327 Educational and General programs on the first and fifteenth days of each month, and up to 50 percent  
 6328 of its annual general fund appropriation for Student Financial Assistance on or after September 1 of  
 6329 each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to  
 6330 meet student obligations;

6331 ii) the College may draw down the sum of all tuition and E&G fees and all other non-general  
 6332 revenues deposited to the State Treasury each day on the same business day they were deposited; and

6333       iii) the College anticipates that expenditures could exceed available revenues from time to time  
6334 during the year if the above disbursement schedule is used. When the College projects a cost deficit in  
6335 activities supported by general fund appropriations, the College may make a request to the State  
6336 Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a  
6337 form and within a timeframe agreeable to the parties, in order to cover expenditures.

6338       These disbursement policies shall authorize the President, or designee, to independently select,  
6339 engage, and contract for such consultants, accountants, and financial experts, and other such providers  
6340 of expert advice and consultation, and, after consultation with the Office of the Attorney General,  
6341 private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall  
6342 continue to include the ability to locally manage and administer the Commonwealth's credit card and  
6343 cost recovery programs related to disbursements, subject to any restrictions contained in the  
6344 Commonwealth's contracts governing those programs, provided that the College shall submit the credit  
6345 card and cost recovery aspects of its financial and operations policies to the State Comptroller for  
6346 review and comment prior to implementing those aspects of those policies. The disbursement policies  
6347 shall ensure that adequate risk management and internal control procedures shall be maintained over  
6348 previously decentralized processes for public records, payroll, and non-payroll disbursements. The  
6349 College shall continue to provide summary quarterly prompt payment reports to the Department of  
6350 Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

6351       The College's disbursement policies shall be guided by the principles of the Commonwealth's policies  
6352 as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date  
6353 of its initial Management Agreement with the Commonwealth, the College shall continue to follow the  
6354 Commonwealth's disbursement policies until such time as specific alternative policies can be developed,  
6355 approved and implemented. Such alternate policies shall be submitted to the State Comptroller for  
6356 review and comment prior to their implementation by the College.

#### 6357       X. DEBT MANAGEMENT.

6358       The President, or designee, shall continue to be authorized to create and implement any and all debt  
6359 management policies as part of a system for the management of College financial resources.

6360       Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or  
6361 other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board,  
6362 and that are consistent with debt capacity and management policies and guidelines established by its  
6363 Board of Visitors, without obtaining the consent of any legislative body, elected official, commission,  
6364 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any  
6365 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided  
6366 that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this  
6367 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised  
6368 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and  
6369 comment prior to its adoption by the College.

6370       The College recognizes that there are numerous types of financing structures and funding sources  
6371 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by  
6372 the President, or designee, within the context of the overall portfolio to ensure that any financial  
6373 product or structure is consistent with the College's objectives. Regardless of the financing structure(s)  
6374 utilized, the President, or designee, shall obtain sufficient documentation to gain a full understanding of  
6375 the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the  
6376 impact on College creditworthiness and debt capacity. All such debt or financial products issued  
6377 pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of  
6378 the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

6379       The College will establish guidelines relating to the total permissible amount of outstanding debt by  
6380 monitoring College-wide ratios that measure debt compared to College balance-sheet resources and  
6381 annual debt service burden. These measures will be monitored and reviewed regularly in light of the  
6382 College's current strategic initiatives and expected debt requirements. The Board of Visitors shall  
6383 periodically review and approve the College's debt capacity and debt management guidelines. Any  
6384 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior  
6385 to their adoption by the College.

#### 6386       XI. INVESTMENT POLICY.

6387       It is the policy of the College to invest its operating and reserve funds solely in the interest of the  
6388 College and in a manner that will provide the highest investment return with the maximum security  
6389 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act  
6390 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence  
6391 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity  
6392 and familiar with such matters would use in the conduct of an enterprise of a like character and with  
6393 like aims.

6394       Endowment investments shall be invested and managed in accordance with the Uniform Management

6395 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.  
6396 The Board of Visitors shall periodically review and approve the investment guidelines governing the  
6397 College's operating and reserve funds.

6398 XII. INSURANCE AND RISK MANAGEMENT.

6399 By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any  
6400 intent during the next biennium to withdraw from any insurance or risk management program made  
6401 available to the College through the Commonwealth's Division of Risk Management and in which the  
6402 College is then participating, to enable the Commonwealth to complete an adverse selection analysis of  
6403 any such decision and to determine the additional costs to the Commonwealth that would result from  
6404 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College  
6405 proceeds to withdraw from the insurance or risk management program, the College shall reimburse the  
6406 Commonwealth for all such additional costs attributable to such withdrawal, as determined by the  
6407 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and  
6408 the Commonwealth.

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6417 3. That the following Chapter 3 shall hereafter be known as the "2006 Management Agreement  
6418 Between the Commonwealth of Virginia and The University of Virginia":

6419 CHAPTER 3.

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MANAGEMENT AGREEMENT  
BY AND BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

6427 This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the  
6428 Commonwealth of Virginia (hereafter, the "Commonwealth") and the Rector and Visitors of the  
6429 University of Virginia (hereafter, "the University") provides as follows:

6430 RECITALS

6431 WHEREAS the University has satisfied the conditions precedent set forth in subsections A and B of  
6432 § 23-38.97 of the Code of Virginia to become a public institution of higher education of the  
6433 Commonwealth governed by Subchapter 3 (§ 23-38.91 et seq.) of the Restructured Higher Education  
6434 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code  
6435 of Virginia ("Subchapter 3" and the "Act," respectively), as evidenced by:

6436 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the University  
6437 held on June 10, 2005, and the accompanying certification of the Secretary of the Board, indicate that  
6438 an absolute two-thirds or more of the members voted to approve the resolution required by subsection A  
6439 1 of § 23-38.97 of the Act;

6440 2. Written Application to the Governor. The University has submitted to the Governor a written  
6441 Application, dated October 27, 2005, with copies to the Chairmen of the House Committee on  
6442 Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate  
6443 Committee on Education and Health, expressing the sense of its Board of Visitors that the University is  
6444 qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the  
6445 University has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and

6446 3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act, the  
6447 Governor has found that the University has fulfilled the requirements of subsection A 2 of § 23-38.97,  
6448 and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of  
6449 the Commonwealth with the University; and

6450 WHEREAS, the University is therefore authorized to enter into this Management Agreement as  
6451 provided in subsection D of § 23-38.88 and Subchapter 3 of the Act.

6452 AGREEMENT

6453 NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education  
6454 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code  
6455 of Virginia, and in consideration of the foregoing premises, the Commonwealth and the University do

HOUSE  
SUBSTITUTE

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6456 now agree as follows:

6457 **ARTICLE 1. DEFINITIONS.**

6458 As used in this Agreement, the following terms have the following meanings, unless the context  
6459 requires otherwise:

6460 "Academic Division" means that part of the University known as State Agency 207.

6461 "Act" means the Restructured Higher Education Administrative and Financial Operations Act,  
6462 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

6463 "Agreement" means "Management Agreement."

6464 "Board of Visitors" means the Rector and Board of Visitors of the University of Virginia.

6465 "College" means that part of the University operated as the University of Virginia's College at Wise  
6466 (State Agency 246).

6467 "Covered Employee" means any person who is employed by the University on either a salaried or  
6468 wage basis.

6469 "Covered Institution" means, on and after the effective date of its initial management agreement with  
6470 the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has  
6471 entered into a management agreement with the Commonwealth to be governed by and in accordance  
6472 with the provisions of subsection D of § 23-38.88 and Subchapter 3 of the Act.

6473 "Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
6474 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
6475 missions of the individual public institutions of higher education of the Commonwealth, and as provided  
6476 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  
6477 Center.

6478 "Management Agreement" means this agreement between the Commonwealth of Virginia and the  
6479 University as required by subsection D of § 23-38.88 and Subchapter 3 of the Act.

6480 "Medical Center" means that part of the University consisting of the University of Virginia Medical  
6481 Center (State Agency 209), and related health care and health maintenance facilities.

6482 "Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the  
6483 University.

6484 "Public institution of higher education" means those two-year and four-year institutions enumerated  
6485 in § 23-14 of the Code of Virginia.

6486 "University" means the University of Virginia, consisting of the Academic Division, the College, and  
6487 the Medical Center.

6488 **ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.**

6489 **SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.** Subchapter 3 of the  
6490 Act provides that, upon the execution of, and as of the effective date for, this Management Agreement,  
6491 the University shall become a Covered Institution entitled to be granted by the Commonwealth and to  
6492 exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in  
6493 this Management Agreement. In general, subject to its management agreement with the Commonwealth,  
6494 status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is  
6495 intended to replace (i) the post-General Assembly authorization prior-approval system of reviews,  
6496 approvals, policies and procedures carried out and implemented by a variety of central State agencies  
6497 with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully  
6498 responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its  
6499 management agreement with the Commonwealth.

6500 **SECTION 2.1.1. Assessments and Accountability.** The University and its implementation of the  
6501 enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board  
6502 of Visitors polices attached hereto as Exhibits M through R, shall be subject to the reviews, assessments,  
6503 and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint  
6504 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or  
6505 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or  
6506 Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by  
6507 law other than the Act.

6508 **SECTION 2.1.2. Express Grant of Powers and Authority.** Subject to the specific conditions and  
6509 limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement;  
6510 Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth  
6511 and the University agree that the Commonwealth has expressly granted to the University by this  
6512 Management Agreement all the powers and authority contained in certain policies adopted by the Board  
6513 of Visitors of the University attached hereto as Exhibits M through R and governing (1) the undertaking  
6514 and implementation of capital projects, and other acquisition and disposition of property (Exhibit M),  
6515 (2) the leasing of property, including capital leases (Exhibit N), (3) information technology (Exhibit O),  
6516 (4) the procurement of goods, services, including certain professional services, insurance, and  
6517 construction (Exhibit P), (5) human resources (Exhibit Q), and (6) its system of financial management

6518 (Exhibit R), including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to  
 6519 establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation  
 6520 authority for non-general funds as provided by the Governor and the General Assembly in the  
 6521 Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations  
 6522 contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management  
 6523 Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits M through  
 6524 R, the Commonwealth and the University agree that the Commonwealth has expressly granted to the  
 6525 University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of  
 6526 Subchapter 3 of the Act.

6527 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the  
 6528 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
 6529 of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits M  
 6530 through R. Consistent with this full and ultimate accountability, however, the Board may, pursuant to  
 6531 its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this  
 6532 Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies  
 6533 adopted by the Board and attached hereto as Exhibits M through R, to a person or persons within the  
 6534 University.

6535 SECTION 2.1.3. Reimbursement by the University of Certain Costs. By July 1 of each  
 6536 odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next  
 6537 biennium to withdraw from any health or other group insurance or risk management program made  
 6538 available to the University through any agency, body corporate, political subdivision, authority, or other  
 6539 entity of the Commonwealth, and in which the University is then participating, to enable the  
 6540 Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to  
 6541 determine the additional costs to the Commonwealth that would result from any such withdrawal. If  
 6542 upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from  
 6543 such health or other group insurance or risk management program, the University shall, pursuant to  
 6544 subdivision D 2 c of § 23-38.88, reimburse the Commonwealth for all such additional costs attributable  
 6545 to such withdrawal as determined by the Commonwealth's actuaries.

6546 SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subsection D  
 6547 (2) (c) of § 23-38.88 of the Act, the University has given consideration to potential future impacts of  
 6548 tuition increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has  
 6549 discussed those potential impacts with the Executive Director and staff of that Plan and with parties in  
 6550 the Administration who participated in the development of this Management Agreement. The Executive  
 6551 Director of the Plan has provided to the University and the Commonwealth the Plan's assumptions  
 6552 underlying the contract pricing of the program.

6553 SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to  
 6554 § 23-38.110 of the Act and subject to the provisions of this Management Agreement, the University may  
 6555 be exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43  
 6556 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate  
 6557 from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the  
 6558 Board of Visitors shall adopt and comply with procurement policies that are based upon competitive  
 6559 principles and seek competition to the maximum practical degree. The Policy Governing the  
 6560 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials  
 6561 and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the  
 6562 "Procurement Rules") attached to that Policy as Attachment 1 constitute the policies and uniform  
 6563 deviations from the VPPA required by subsections A and B of § 23-38.110 of the Act.

6564 Subsection D of § 23-38.110 of the Act requires that the University identify the public, educational,  
 6565 and operational interests served by any procurement rule or rules that deviate from those in the VPPA.  
 6566 The adopted Board of Visitors policy on procurement and the Procurement Rules provide the University  
 6567 with the autonomy to administer its procurement process while fully adhering to the principle that  
 6568 competition should be sought to the maximum extent feasible. This autonomy will better position the  
 6569 University to support the requirements of its growing teaching, research and outreach missions. Greater  
 6570 autonomy in procurement will improve internal capacity to respond quickly to emergent material and  
 6571 service issues and, therefore, enable the University to be more efficient and effective in meeting the  
 6572 Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced.  
 6573 Taken collectively, the University's procurement policies and rules that differ from those required by the  
 6574 VPPA will enhance procurement "best practices" as they currently are being observed within the higher  
 6575 education community nationally. Further, these changes will provide efficiencies to both the University  
 6576 and public sector suppliers.

6577 SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires  
 6578 that a Covered Institution include in its management agreement with the Commonwealth the

6579 quantification of cost savings realized as a result of the additional operational flexibility provided  
6580 pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth  
6581 has not yet been implemented by the University, the parties agree that the University is not in a position  
6582 to quantify any such cost savings at this time, although the University expects that there will be cost  
6583 savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the  
6584 Act and that such cost savings will be part of the determinations made during the reviews, assessments,  
6585 and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the  
6586 Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia,  
6587 and as otherwise described in Section 2.1.1 above.

6588 SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the University  
6589 shall continue to fully participate in, and receive funding support from the many and varied programs  
6590 established now or in the future by the Commonwealth to provide support for Virginia's public  
6591 institutions of higher education and for Virginians attending such institutions, including but not limited  
6592 to: the state capital outlay and bond financing initiatives undertaken from time to time by the  
6593 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq.  
6594 of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the  
6595 Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student  
6596 financial assistance programs; and other statewide programs or initiatives that exist, or may be  
6597 established, in support of the Commonwealth's higher education institutions, programs, or activities.

6598 As a teaching hospital that is a part of the University as of the Effective Date, the Medical Center  
6599 shall continue to be characterized as a state government-owned or operated and state-owned teaching  
6600 hospital for purposes of payments under the State Plan for Medicaid Services adopted pursuant to  
6601 § 32.1-325 et seq. The University has committed to serve indigent and medically indigent patients  
6602 through its adoption of the Guidelines for the Eligibility of Indigent and Medically Indigent Persons for  
6603 Health Care Services at the State University Teaching Hospitals. Pursuant to subsection B of  
6604 § 23-38.93 of the Act, the Commonwealth, through the Department of Medical Assistance Services, shall,  
6605 subject to the appropriation in the Appropriation Act in effect, continue to reimburse the full cost of the  
6606 provision of care, treatment, health-related and educational services to indigent and medically indigent  
6607 patients and continue to treat the Medical Center as a Type One Hospital for purposes of such  
6608 reimbursement.

6609 SECTION 2.1.8. Implied Authority. Pursuant to subsection D 1 of § 23-38.88 of the Act, the only  
6610 implied authority granted to the University by this Management Agreement is that implied authority that  
6611 is actually necessary to carry out the expressed grant of financial or operational authority contained in  
6612 this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as  
6613 Exhibits M through R.

6614 SECTION 2.1.9. Exercise of Authority. The University and the Commonwealth acknowledge and  
6615 agree that the execution of this Management Agreement constitutes the conclusion of a process that, as  
6616 of the effective date of this Agreement, confers upon the University the enhanced authority and  
6617 operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of  
6618 the Act. Therefore, without any further conditions or requirements, the University shall, on and after the  
6619 effective date of this Management Agreement, be authorized to exercise the authority conferred upon it  
6620 by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as  
6621 Exhibits M through R, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act  
6622 except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have  
6623 been limited by this Management Agreement or the Board of Visitors policies attached hereto as  
6624 Exhibits M through R.

6625 The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of  
6626 § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of  
6627 Visitors of the University shall assume full responsibility for management of the University, subject to  
6628 the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this  
6629 Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The  
6630 Board of Visitors shall be fully accountable for (a) the management of the University as provided in the  
6631 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,  
6632 and (c) meeting such other provisions as are set forth in this Management Agreement.

6633 SECTION 2.2. State Goals.

6634 SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education  
6635 of the Commonwealth by subsection B of § 23-38.88, prior to August 1, 2005, the Board of Visitors of  
6636 the University adopted the resolution setting forth its commitment to the Governor and the General  
6637 Assembly to meet the State goals specified in that subsection B. In addition to the above commitments,  
6638 the University commits to furthering these State goals by:

6639 1. In addition to its six-year target of achieving \$337 million in external research by 2011-12, the  
6640 University commits to match from institutional funds, other than general funds or tuition, on a dollar for

6641 dollar basis, any additional research funds provided by the State in the Appropriation Act above the  
6642 amount provided from institutional funds for research in 2005-06.

6643 2. In a concerted effort to provide educational opportunities to Virginia students attending  
6644 institutions in the Virginia Community College System ("VCCS") and Richard Bland College, the  
6645 University commits to work with Virginia Polytechnic Institute and State University ("Virginia Tech")  
6646 and the College of William and Mary in Virginia to establish a program under which these three  
6647 institutions will increase significantly the number of such students transferring to their institutions.  
6648 Specifically, pursuant to this program, the University, Virginia Tech and the College of William and  
6649 Mary in Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard  
6650 Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students  
6651 each year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students  
6652 each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students  
6653 each year over the number enrolled in 2004-05, for a total of approximately 1,250 such transfer  
6654 students each year. The three institutions have agreed that they will mutually determine how to divide  
6655 the responsibility for these additional transfer students equitably among themselves.

6656 3. As an institutional priority and obligation, the University commits to the Governor and General  
6657 Assembly to work meaningfully and visibly with an economically distressed region or local area of the  
6658 Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in  
6659 education, income, employment, and other factors. The University commits to establish a formal  
6660 partnership with that area to develop jointly a specific action plan that builds on the University's  
6661 programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise  
6662 to stimulate economic development in the area to make the area more economically viable, and to  
6663 improve student achievement and teacher and administrator skill sets in a school division in that area.  
6664 The University shall submit the action plan to the Governor and General Assembly by no later than  
6665 December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each  
6666 year on its progress in implementing the action plan during the prior fiscal year.

6667 SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the  
6668 Code of Virginia, the University, along with all other public institutions of higher education of the  
6669 Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia  
6670 ("SCHEV") by October 1, 2005, an institution-specific Six-Year Plan addressing the University's  
6671 academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through  
6672 2011-12. Subsection A of § 23-9.2:3.02 requires the University to update this Six-Year Plan by October  
6673 1 of each odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management  
6674 agreement address, among other issues, such matters as the University's in-state undergraduate student  
6675 enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state  
6676 undergraduate students. These matters are addressed below and in the University's Six-Year Plan  
6677 submitted to SCHEV, and the parties therefore agree that the University's Six-Year Plan and the  
6678 description below meet the requirement of subsection B of § 23-38.97 of the Act.

6679 Subsection B of § 23-38.104 of the Act requires the Board of Visitors of the University to include in  
6680 this Management Agreement the University's commitment to provide need-based grant aid for middle-  
6681 and lower-income Virginia students in a manner that encourages student enrollment and progression  
6682 without respect to potential increases in tuition and fees. The University's commitment in this regard is  
6683 clear.

6684 The Academic Division will continue to offer enrollment to in-state undergraduate students without  
6685 regard to ability to pay and shall continue implementation of AccessUVa, a financial aid program  
6686 designed to keep higher education affordable for all undergraduate students, including Virginians and  
6687 non-Virginians, who qualify for admission, regardless of economic circumstance. In the fall 2005  
6688 AccessUVa was modified to provide expanded benefits for qualifying Virginia Community College  
6689 System transfer students. The program shall be substantially as described in the remainder of this  
6690 Section 2.2.2, as may be amended from time to time by the Board of Visitors of the University and  
6691 reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on  
6692 Finance and the House Committee on Appropriations.

6693 The Academic Division currently offers financial aid packages to meet 100 percent of demonstrated  
6694 need to all qualified undergraduate students. This goal was met in 2004-05.

6695 The Academic Division will eliminate all need-based loans, replacing them with grants, in the  
6696 financial-aid packages of low-income undergraduate students, beginning with the fall 2004 entering  
6697 class. At this time low-income is defined as families with an income equivalent to 200 percent of the  
6698 federal poverty line or less. This phase will be fully implemented by fall 2007. The University's goals  
6699 for this component of the program include:

- 6700 1. Increase enrollment by low-income students.
- 6701 2. Improve the socio-economic diversity at the University.

6702 3. Enable low-income financial aid recipients to have an enhanced student experience.

6703 4. Improve satisfaction in post graduate choices of low-income financial aid recipients.

6704 Success in attaining these goals will be measured by five metrics, 1) applications from low-income  
6705 students, 2) low-income applicants offered admissions, 3) low-income applicants who accepted offers, 4)  
6706 yield of low-income students, and 5) percentage of low-income students in the student body. In 2005-06  
6707 applications from low-income students rose 13.1 percent from the previous year for a total of 875. The  
6708 University offered admission to 357 applicants, 10 percent more than in the prior year. Almost 40  
6709 percent more of those low-income students to whom the University offered admission for the 2005-06  
6710 academic year accepted the offer, 233 compared to 133 last year, increasing the yield from 50 percent  
6711 to over 64 percent. The trend in the percentage of low-income students in the student body has also  
6712 improved over the last two years increasing from 4.29 percent in 2004-05 to 6.45 percent in 2005-06.  
6713 The University expects to increase the numbers of low-income students enrolled from the current 830 to  
6714 1,033 by 2011-12 as outlined in the Six-Year Plan.

6715 The Academic Division will cap the amount of need-based loans to any undergraduate student who  
6716 qualifies for some form of financial aid to a maximum of 25 percent of the total in-state cost of  
6717 attendance over four years and will meet the remaining need with grants, beginning with the fall 2005  
6718 first-year or VCCS transfer students. All students, regardless of state residency, will receive the in-state  
6719 cap level. This phase will be fully implemented by fall 2008. This particular component of the program  
6720 is targeted at middle-income students whose families earn between \$75,000 and \$149,999. The  
6721 University's goals for this component of the program include:

6722 1. Improve the socio-economic diversity at the University.

6723 2. Enable financial aid recipients to have an enhanced student experience.

6724 3. Improve satisfaction in post graduate choices.

6725 Success will be measured in this area by three metrics, 1) applications from middle-income students,  
6726 2) participation of financial aid recipients in study abroad, internships, volunteer work, student  
6727 activities, etc., and 3) post graduate choices and starting salaries. Seven percent or 219 more  
6728 middle-income students applied to the University in 2005-06 than in 2004-05 and qualified for  
6729 AccessUVA benefits.

6730 The Academic Division will provide comprehensive counseling to prospective and current students  
6731 and their families, assisting them in the financial aid application process and presenting them with  
6732 financing options outside of need-based financial aid. This last component of the program has three  
6733 main goals:

6734 1. Improve the perception of the University as affordable.

6735 2. Increase the socio-economic diversity of the University.

6736 3. Improve student understanding of financial planning and debt management.

6737 The University's financial aid educational programs are currently being designed. We expect to  
6738 measure trends in the following ways in order to gage success: 1) usage figures of educational  
6739 programs provided on financial planning and debt management, 2) percent of financial aid applicants  
6740 participating in financial management programs, and 3) evaluation of effectiveness of the educational  
6741 programs.

6742 The Commonwealth and the University agree that this commitment meets the requirements of  
6743 subsection B of § 23-38.104 of the Act.

6744 SECTION 2.3. Authority Granted to The University of Virginia's College at Wise. The College shall  
6745 receive the benefits of the additional financial and operational authority granted by this Management  
6746 Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits M through R are  
6747 implemented by the University on behalf of the College, but the College shall not receive any additional  
6748 independent financial or operational authority as a result of this Management Agreement or the  
6749 attached Board of Visitors policies beyond the independent financial and operational authority that it  
6750 had prior to the effective date of this Management Agreement or that it may be granted by law in the  
6751 future.

6752 SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, the University  
6753 shall be governed and administered in the manner provided not only in this Management Agreement, but  
6754 also as provided in the Appropriation Act then in effect and the University's Enabling Legislation.

6755 SECTION 2.4.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant  
6756 to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is  
6757 a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act,  
6758 or this Management Agreement, or the Board of Visitors policies attached to this Management  
6759 Agreement as Exhibits M through R, the provisions of the Appropriation Act shall control, and shall  
6760 continue to control unless provided otherwise by law.

6761 SECTION 2.4.2. The University's Enabling Legislation. As provided in subsection C of § 23-38.91 of  
6762 the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University's  
6763 Enabling Legislation, the Enabling Legislation shall control, except as provided in subsection A.1.b of

6764 § 23-38.112 of the Act regarding § 23-77.1.

6765 SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § 23-38.92 of the  
 6766 Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of  
 6767 this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management,  
 6768 supervision, regulation, and control of public institutions of higher education shall be applicable to the  
 6769 University as provided by the express terms of this Management Agreement. As further provided in  
 6770 subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any  
 6771 provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this  
 6772 Management Agreement shall control.

6773 SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of  
 6774 § 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,  
 6775 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,  
 6776 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  
 6777 of Virginia, the University shall remain a public institution of higher education of the Commonwealth  
 6778 following the effective date of this Management Agreement, and shall retain the authority granted and  
 6779 any obligations required by such provisions, unless and until provided otherwise by law other than the  
 6780 Act. In addition, the University shall retain the authority, and any obligations related to the exercise of  
 6781 such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et  
 6782 seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.),  
 6783 Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.),  
 6784 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  
 6785 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  
 6786 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  
 6787 seq.), unless and until provided otherwise by law other than the Act.

6788 SECTION 2.4.5. Public Access to Information. As provided in § 23-38.95 of the Act, the University  
 6789 shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information  
 6790 Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct  
 6791 business pursuant to § 2.2-3709 and, in all cases, may conduct business as a "state public body" for  
 6792 purposes of subsection B of § 2.2-3708.

6793 SECTION 2.4.6. Conflicts of Interests. As provided in § 23-38.96 of the Act, the provisions of the  
 6794 State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) that are  
 6795 applicable to officers and employees of a state governmental agency shall continue to apply to the  
 6796 members of the Board of Visitors of the University and to its Covered Employees.

6797 SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other  
 6798 powers and authorities granted to the University pursuant to any other sections of the Code of Virginia,  
 6799 including other provisions of the Act, are not affected by this Management Agreement or the Board  
 6800 policies attached hereto as Exhibits M through R.

6801 ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE,  
 6802 MANAGEMENT AGREEMENT.

6803 SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the  
 6804 Board of Visitors policies attached hereto as Exhibits M through R shall be reported to the Secretaries  
 6805 of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on  
 6806 Finance and the House Committee on Appropriations and shall be posted on the University's website.  
 6807 The change or deviation shall become effective unless one of the above persons notifies the University in  
 6808 writing within 60 days that the change or deviation is substantial and material. Any substantial and  
 6809 material change or deviation shall require the execution by the parties of an amendment to this  
 6810 Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of  
 6811 § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to  
 6812 subsection D 4 of § 23-38.88 of the Act.

6813 SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.

6814 SECTION 3.2.1. Governor. Pursuant to subsection D 4 of § 23-38.88, and § 23-38.98, of the Act, if  
 6815 the Governor makes a written determination that the University is not in substantial compliance with the  
 6816 terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor  
 6817 shall provide a copy of that written determination to the Rector of the Board of Visitors of the  
 6818 University and to the members of the General Assembly, and (ii) the University shall develop and  
 6819 implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into  
 6820 substantial compliance with the terms of this Management Agreement and with the requirements of the  
 6821 Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of  
 6822 the General Assembly. If after a reasonable period of time after the corrective action plan has been  
 6823 implemented by the University, the Governor determines that the institution is not yet in substantial  
 6824 compliance with this Management Agreement or the requirements of the Act, the Governor may void this

6825 *Management Agreement. Upon the Governor voiding this Management Agreement, the University shall*  
 6826 *no longer be allowed to exercise any restructured financial or operational authority pursuant to the*  
 6827 *provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent*  
 6828 *management agreement with the Secretary or Secretaries designated by the Governor or the voided*  
 6829 *Management Agreement is reinstated by the General Assembly.*

6830 *SECTION 3.2.2. General Assembly. As provided in subsection D 4 of § 23-38.88 of the Act, the*  
 6831 *General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to*  
 6832 *§ 23-38.98 of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the*  
 6833 *Act may be revoked by an act of the General Assembly (i) if the University fails to meet the*  
 6834 *requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this*  
 6835 *Management Agreement.*

6836 *ARTICLE 4. GENERAL PROVISIONS.*

6837 *SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied,*  
 6838 *shall be construed as conferring any third-party beneficiary status on any person or entity.*

6839 *SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § 23-38.88 of the Act, the*  
 6840 *University and the members of its Board of Visitors, officers, directors, employees, and agents shall be*  
 6841 *entitled to the same sovereign immunity to which they would be entitled if the University were not*  
 6842 *governed by the Act; provided that the Virginia Tort Claims Act, § 8.01-195.1 et seq. of the Code of*  
 6843 *Virginia, and its limitations on recoveries shall remain applicable with respect to the University.*

6844 *SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June*  
 6845 *30, 2010.*

6846 *WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of*  
 6847 *November, 2005, and shall become effective on the effective date of legislation enacted into law*  
 6848 *providing for the terms of such Agreement.*

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*EXHIBIT M*

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

*POLICY GOVERNING CAPITAL PROJECTS*

*THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
 POLICY GOVERNING CAPITAL PROJECTS*

*I. PREAMBLE.*

6870 *Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389,*  
 6871 *respectively) delegated limited but significant autonomy to the University of Virginia to establish its own*  
 6872 *post-appropriation system for undertaking the implementation of non-general fund capital projects for*  
 6873 *the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act delegated*  
 6874 *nearly identical limited autonomy to the University as a whole for non-general fund capital projects.*  
 6875 *Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of*  
 6876 *Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the "Existing Policy*  
 6877 *Statement").*

6878 *The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter*  
 6879 *4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the*  
 6880 *University may be delegated the authority to establish its own system for undertaking the implementation*  
 6881 *of its capital projects. In general, status as a Covered Institution is designed to replace the*  
 6882 *post-authorization system of reviews, approvals, policies and procedures carried out by a variety of*  
 6883 *central State agencies, and also the traditional pre-authorization approval process for projects funded*  
 6884 *entirely with non-general funds and without any proceeds from State Tax Supported Debt. The*  
 6885 *University's system for carrying out its capital outlay process as a Covered Institution is to be governed*  
 6886 *by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the*

6887 *Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition*  
 6888 *of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services,*  
 6889 *Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted*  
 6890 *Board of Visitors policies regarding the University's capital projects, whether funded by a state general*  
 6891 *fund appropriation, State Tax Supported Debt, or funding from other sources.*

6892 *This Policy is intended to encompass and implement the authority that may be granted to the*  
 6893 *University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the*  
 6894 *University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including*  
 6895 *other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In*  
 6896 *particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed*  
 6897 *those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

## 6898 II. DEFINITIONS.

6899 *As used in this policy, the following terms shall have the following meanings, unless the context*  
 6900 *requires otherwise:*

6901 *"Academic Division" means that part of the University known as State Agency 207.*

6902 *"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*  
 6903 *Chapter 4.10 of Title 23 of the Code of Virginia.*

6904 *"Board of Visitors" or "Board" means the Rector and Visitors of the University of Virginia.*

6905 *"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting*  
 6906 *Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

6907 *"Capital Professional Services" means professional engineering, architecture, land surveying and*  
 6908 *landscape architecture services related to capital projects.*

6909 *"Capital project(s)" means the acquisition of any interest in land, including improvements on the*  
 6910 *acquired land at the time of acquisition, new construction, improvements or renovations, and Capital*  
 6911 *Leases.*

6912 *"College" means that part of the University operated as the University of Virginia's College at Wise,*  
 6913 *also known as State Agency 246.*

6914 *"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a*  
 6915 *public institution of higher education of the Commonwealth of Virginia that has entered into a*  
 6916 *management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the*  
 6917 *Act.*

6918 *"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of*  
 6919 *Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and*  
 6920 *missions of the individual public institutions of higher education of the Commonwealth, and as provided*  
 6921 *in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.*

6922 *"Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation*  
 6923 *Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.*

6924 *"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on*  
 6925 *the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing*  
 6926 *\$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

6927 *"Medical Center" means that part of the University consisting of the University of Virginia Medical*  
 6928 *Center (State Agency 209), and related health care and health maintenance facilities.*

6929 *"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section*  
 6930 *9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from*  
 6931 *general government funds, as defined in the December 20, 2004 Report to the Governor and General*  
 6932 *Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

6933 *"University" means the University of Virginia, consisting of the Academic Division, the College, and*  
 6934 *the Medical Center.*

## 6935 III. SCOPE OF POLICY.

6936 *This Policy applies to the planning and budget development for capital projects, capital project*  
 6937 *authorization, and the implementation of capital projects, whether funded by a general fund*  
 6938 *appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other*  
 6939 *sources.*

6940 *This Policy provides guidance for 1) the process for developing one or more capital project*  
 6941 *programs for the University, 2) authorization of new capital projects, 3) procurement of Capital*  
 6942 *Professional Services and construction services, 4) design reviews and code approvals for capital*  
 6943 *projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land*  
 6944 *acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting*  
 6945 *requirements.*

## 6946 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

6947 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*

6948 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
 6949 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
 6950 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
 6951 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,  
 6952 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
 6953 implementation of those duties and responsibilities pursuant to the University's usual delegation policies  
 6954 and procedures.

#### 6955 V. CAPITAL PROGRAM.

6956 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt  
 6957 a system for developing one or more capital project programs that defines or define the capital needs of  
 6958 the University for a given period of time consistent with the University's published Master Plan. This  
 6959 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of  
 6960 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be  
 6961 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from  
 6962 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board  
 6963 may approve amendments to the program for Major Capital Projects annually or more often if  
 6964 circumstances warrant.

6965 It shall be University policy that each capital project program shall meet the University's mission  
 6966 and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be  
 6967 University policy that each capital project shall be of a size and scope to provide for the defined  
 6968 program needs, designed in accordance with all applicable building codes and handicapped accessibility  
 6969 standards as well as the University's design guidelines and standards, and costed to reflect current costs  
 6970 and escalated to the mid-point of anticipated construction.

#### 6971 VI. AUTHORIZATION OF CAPITAL PROJECTS

6972 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its  
 6973 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief  
 6974 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other  
 6975 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund  
 6976 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both  
 6977 Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies  
 6978 then applicable, and shall follow the State's process for capital budget requests.

6979 It shall be the policy of the University that the implementation of capital projects shall be carried  
 6980 out so that the capital project as completed is the capital project approved by the Board for Major  
 6981 Capital Projects and according to the procedures adopted by the President, acting through the  
 6982 Executive Vice President and Chief Operating Officer, for all other capital projects. The President,  
 6983 acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence  
 6984 to this requirement.

6985 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond  
 6986 the plans and justifications that were the basis for the capital project's approval, either before or during  
 6987 construction, unless approved in advance as described above. Minor changes shall be permissible if  
 6988 they are determined by the President, acting through the Executive Vice President and Chief Operating  
 6989 Officer, to be justified.

6990 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must  
 6991 include a statement of urgency if not part of the approved Major Capital Project program.

#### 6992 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 6993 SERVICES.

6994 It shall be the policy of the University that procurements shall result in the purchase of high quality  
 6995 services and construction at reasonable prices and shall be consistent with the Policy Governing the  
 6996 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials  
 6997 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and  
 6998 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed  
 6999 to:

7000 Seeking competition to the maximum practical degree, taking into account the size of the anticipated  
 7001 procurement, the term of the resulting contract and the likely extent of competition;

7002 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the  
 7003 appearance of any impropriety prohibited by State law or University policy;

7004 Making procurement rules clear in advance of any competition;

7005 Providing access to the University's business to all qualified vendors, firms and contractors, with no  
 7006 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage  
 7007 in cooperative procurements and to meet special needs of the University;

7008 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against  
 7009 employees or applicants because of race, religion, color, sex, national origin, age, disability or other

7010 basis prohibited by State law except where there is a bona fide occupational qualification reasonably  
7011 necessary to the contractor's normal operations;

7012 Providing for a non-discriminatory procurement process, and including appropriate and lawful  
7013 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small  
7014 businesses and to promote and encourage a diversity of suppliers.

7015 The President, acting through the Executive Vice President and Chief Operating Officer, is  
7016 authorized to develop implementing procedures for the procurement of Capital Professional Services and  
7017 construction services at the University. The procedures shall implement this Policy and provide for:

7018 A system of competitive negotiation for Capital Professional Services, including a procedure for  
7019 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,  
7020 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of  
7021 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

7022 A prequalification procedure for contractors or products;

7023 A procedure for special construction contracting methods, including but not limited to design-build  
7024 and construction management contracts; and

7025 A prompt payment procedure.

7026 The University also may enter into cooperative arrangements with other private or public health or  
7027 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,  
7028 in the judgment of the University, the purposes of this Policy will be furthered.

7029 **VIII. DESIGN REVIEWS AND CODE APPROVALS.**

7030 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final  
7031 Major Capital Project authorization based on the size, scope and cost estimate provided with the  
7032 design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall  
7033 be required. For all capital projects other than Major Capital Projects, the President, acting through  
7034 the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and  
7035 project authorization based on the size, scope and cost estimate provided with the design. It shall be  
7036 the University's policy that all capital projects shall be designed and constructed in accordance with  
7037 applicable Virginia Uniform Statewide Building Code ("VUSBC") standards and the applicable  
7038 accessibility code.

7039 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
7040 designate a Building Official responsible for building code compliance by either (i) hiring an individual  
7041 to be the University Building Official, or (ii) continuing to use the services of the Department of  
7042 General Services, Division of Engineering and Buildings, to perform the Building Official function. If  
7043 option (i) is selected, the individual hired as the University Building Official shall be a full-time  
7044 employee, a registered professional architect or engineer, and certified by the Department of Housing  
7045 and Community Development to perform this Building Official function. The University Building Official  
7046 shall issue building permits for each capital project required by the VUSBC to have a building permit,  
7047 and shall determine the suitability for occupancy of, and shall issue certifications for building  
7048 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification,  
7049 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital  
7050 project and that such capital project has been inspected by the State Fire Marshal or his designee.

7051 When serving as the University Building Official, such individual shall organizationally report directly  
7052 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it  
7053 shall fulfill the code review requirement by maintaining a review unit supported by resources and staff  
7054 who are certified by the Department of Housing and Community Development in accordance with  
7055 § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and  
7056 documents for compliance with building codes and standards and perform required inspections of work  
7057 in progress and the completed capital project. No individual licensed professional architect or engineer  
7058 hired or contracted with to perform these functions shall also perform other building code-related  
7059 design, construction, facilities-related project management or facilities management functions for the  
7060 University on the same capital project.

7061 **IX. ENVIRONMENTAL IMPACT REPORTS.**

7062 It shall be the policy of the University to assess the environmental, historic preservation, and  
7063 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts  
7064 to the extent practicable. The University shall develop a procedure for the preparation and approval of  
7065 environmental impact reports for capital projects, in accordance with State environmental, historic  
7066 preservation, and conservation requirements generally applicable to capital projects otherwise meeting  
7067 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of  
7068 \$300,000 or more.

7069 **X. BUILDING DEMOLITIONS.**

7070 It shall be the policy of the University to consider the environmental and historical aspects of any

7071 *proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.*  
 7072 *The University shall develop a procedure for the preparation and review of demolition requests,*  
 7073 *including any necessary reviews by the Department of Historic Resources and the Art and Architectural*  
 7074 *Review Board in accordance with State historic preservation requirements generally applicable to*  
 7075 *capital projects in the Commonwealth. Further, for any property that was acquired or constructed with*  
 7076 *funding from a general fund appropriation of the General Assembly or from proceeds from State Tax*  
 7077 *Supported Debt, general laws applicable to State owned property shall apply.*

7078 **XI. BUILDING OR LAND ACQUISITIONS.**

7079 *It is the policy of the University that capital projects involving building or land acquisition shall be*  
 7080 *subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real*  
 7081 *property. The President, acting through the Executive Vice President and Chief Operating Officer, shall*  
 7082 *ensure that the project management system implemented pursuant to Section XIII below provides for a*  
 7083 *review and analysis of all pertinent matters relating to the acquisition of buildings and land as any*  
 7084 *prudent purchaser would perform to the end that any building or land acquired by the University shall*  
 7085 *be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability*  
 7086 *to the University and that the cost of the real property to be acquired, together with any contemplated*  
 7087 *development thereof, shall be such that compliance with the provisions of Section VI of this Policy is*  
 7088 *achieved. In addition, the President, acting through the Executive Vice President and Chief Operating*  
 7089 *Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies*  
 7090 *pertaining to the acquisition of buildings or land for capital projects are carried out.*

7091 **A. Environmental and Land Use Considerations.**

7092 *It is the policy of the University to reasonably cooperate with each locality affected by the*  
 7093 *acquisition. Such cooperation shall include but not be limited to furnishing any information that the*  
 7094 *locality may reasonably request and reviewing any requests by the locality with regard to any such*  
 7095 *acquisition. The University shall consider the zoning and comprehensive plan designation by the*  
 7096 *locality of the building or land and surrounding parcels, as well as any designation by State or federal*  
 7097 *agencies of historically or archeologically significant areas on the land. Nothing herein shall be*  
 7098 *construed as requiring the University to comply with local zoning laws and ordinances.*

7099 **B. Infrastructure and Site Condition.**

7100 *The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure*  
 7101 *that, in the case of capital projects involving the acquisition of buildings or land, the project*  
 7102 *management systems implemented under Section XIII below provide for a review of the following*  
 7103 *matters prior to acquisition of the building or land: that any land can be developed for its intended*  
 7104 *purpose without extraordinary cost; that an environmental engineer has been engaged by the University*  
 7105 *to provide an assessment of any environmental conditions on the land; that there is adequate vehicular*  
 7106 *ingress and egress to serve the contemplated use of the building or land; that utilities and other services*  
 7107 *to the land are adequate or can reasonably be provided or have been provided in the case of building*  
 7108 *acquisitions; and that the condition and grade of the soils have been examined to determine if any*  
 7109 *conditions exist that would require extraordinary site work or foundation systems.*

7110 **C. Title and Survey.**

7111 *A survey shall be prepared for any real property acquired, and an examination of title to the real*  
 7112 *property shall be conducted by a licensed attorney or, in the alternative, a commitment for title*  
 7113 *insurance shall be procured from a title insurance company authorized to do business in the*  
 7114 *Commonwealth. Based upon the survey and title examination or report, the President, acting through*  
 7115 *the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real*  
 7116 *property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens,*  
 7117 *encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse*  
 7118 *effect upon the University's ability to own, occupy, convey or develop the real property.*

7119 **D. Appraisal.**

7120 *An appraisal shall be conducted of the real property to be acquired to determine its fair market*  
 7121 *value and the consistency of the fair market value with the price agreed upon by the University.*

7122 **XII. BUILDING OR LAND DISPOSITIONS.**

7123 *The Board of Visitors shall approve the disposition of any building or land. Disposition of land or*  
 7124 *buildings, the acquisition or construction of which was funded entirely or in part by a general fund*  
 7125 *appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both*  
 7126 *Board of Visitors approval and other approvals in accordance with general law applicable to*  
 7127 *State-owned property and with the University's Enabling Legislation.*

7128 **XIII. PROJECT MANAGEMENT SYSTEMS.**

7129 *The President, acting through the Executive Vice President and Chief Operating Officer, shall*  
 7130 *implement one or more systems for the management of capital projects for the University. The systems*  
 7131 *may include the delegation of project management authority to appropriate University officials,*  
 7132 *including a grant of authority to such officials to engage in further delegation of authority as the*

7133 *President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.*  
 7134 *The project management systems for capital projects shall be designed to ensure that such projects*  
 7135 *comply with the provisions of this Policy and other Board of Visitors policies applicable to closely*  
 7136 *related subjects such as selection of architects or policies applicable to University buildings and*  
 7137 *grounds.*  
 7138 *The project management systems may include one or more reporting systems applicable to capital*  
 7139 *projects whereby University officials responsible for the management of such projects provide*  
 7140 *appropriate and timely reports to the President, acting through the Executive Vice President and Chief*  
 7141 *Operating Officer, on the status of such projects during construction.*

7142 **XIV. REPORTING REQUIREMENTS.**

7143 *In addition to complying with any internal reporting systems contained in the University's project*  
 7144 *management systems, as described in Section XIII above, the University shall comply with State*  
 7145 *reporting requirements for those Major Capital Projects funded entirely or in part by a general fund*  
 7146 *appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project*  
 7147 *constructs improvements on land, or renovates property, that originally was acquired or constructed in*  
 7148 *whole or in part with a general fund appropriation for that purpose or proceeds from State Tax*  
 7149 *Supported Debt, and such improvements or renovations are undertaken entirely with funds not*  
 7150 *appropriated by the General Assembly and, if the cost of such improvements or renovations is*  
 7151 *reasonably expected to exceed two million dollars, the decision to undertake such improvements or*  
 7152 *renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine,*  
 7153 *the President, acting through the Executive Vice President and Chief Operating Officer, shall report to*  
 7154 *the Department of General Services on the status of such capital projects at the initiation of the project,*  
 7155 *prior to the commencement of construction, and at the time of acceptance of any such capital project.*

7156 **EXHIBIT N**

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 7159 **MANAGEMENT AGREEMENT**  
 7160 **BETWEEN**  
 7161 **THE COMMONWEALTH OF VIRGINIA**  
 7162 **AND**  
 7163 **THE UNIVERSITY OF VIRGINIA**  
 7164 **PURSUANT TO**  
 7165 **THE RESTRUCTURED HIGHER EDUCATION**  
 7166 **FINANCIAL AND ADMINISTRATIVE OPERATIONS**  
 7167 **ACT OF 2005**

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 7169  
 7170 **POLICY GOVERNING**  
 7171 **LEASES OF REAL PROPERTY**

7172  
 7173  
 7174 **THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA**  
 7175 **POLICY GOVERNING LEASES OF REAL PROPERTY**

7176 **I. PREAMBLE.**

7177 *In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases*  
 7178 *of Property for certain leases entered into by the University, which was amended in 2003 as the Policy*  
 7179 *Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The*  
 7180 *Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10*  
 7181 *(§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered*  
 7182 *Institution, the University of Virginia may have the authority to establish its own system for the leasing*  
 7183 *of real property. The University's system for implementing this authority is to be governed by policies*  
 7184 *adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board*  
 7185 *of Visitors policies regarding Leases of real property entered into by the University.*

7186 *This Policy is intended to cover the authority that may be granted to the University pursuant to*  
 7187 *Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the*  
 7188 *Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act*  
 7189 *and the University's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this*  
 7190 *Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center*  
 7191 *by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act,*  
 7192 *are not affected by this Policy.*

7193 **II. DEFINITIONS.**

7194 *The following words and terms, when used in this Policy, shall have the following meaning unless*  
 7195 *the context clearly indicates otherwise:*

7196 *"Academic Division" means that part of the University known as State Agency 207.*

7197 *"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*  
 7198 *Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*

7199 *"Board of Visitors" means the Rector and Visitors of the University of Virginia.*

7200 *"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting*  
 7201 *Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

7202 *"College" means that part of the University operated as the University of Virginia's College at Wise,*  
 7203 *also known as State Agency 246.*

7204 *"Covered Institution" means a public institution of higher education of the Commonwealth of*  
 7205 *Virginia that has entered into a Management Agreement with the Commonwealth to be governed by*  
 7206 *Subchapter 3 of the Act.*

7207 *"Expense Lease" means an Operating Lease of real property under the control of another entity to*  
 7208 *the University.*

7209 *"Income Lease" means an Operating Lease of real property under the control of the University to*  
 7210 *another entity.*

7211 *"Lease" or "Leases" means any type of lease involving real property.*

7212 *"Medical Center" means that part of the University consisting of the University of Virginia Medical*  
 7213 *Center, known as State Agency 209, and related health care and health maintenance facilities.*

7214 *"Operating Lease" means any lease involving real property, or improvements thereon, that is not a*  
 7215 *Capital Lease.*

7216 *"University" means the University of Virginia, consisting of the Academic Division, the College, and*  
 7217 *the Medical Center.*

### 7218 **III. SCOPE OF POLICY.**

7219 *This Policy provides guidance for the implementation of all University Leases.*

### 7220 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

7221 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*  
 7222 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
 7223 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*  
 7224 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*  
 7225 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*  
 7226 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
 7227 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*  
 7228 *and procedures.*

### 7229 **V. REQUIREMENTS FOR LEASES.**

#### 7230 **A. Factors to Be Considered When Entering into Leases.**

7231 *All Leases shall be for a purpose consistent with the mission of the University. The decision to enter*  
 7232 *into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy,*  
 7233 *consideration of all costs of occupancy, and a determination that the use of the property to be leased is*  
 7234 *necessary and is efficiently planned. Leases shall also conform to the space planning procedures that*  
 7235 *may be adopted by the President, acting through the Executive Vice President and Chief Operating*  
 7236 *Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the*  
 7237 *space is intended.*

#### 7238 **B. Competition to Be Sought to Maximum Practicable Degree.**

7239 *Competition shall be sought to the maximum practicable degree for all Leases. The President, acting*  
 7240 *through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases*  
 7241 *are procured through competition to the maximum degree practicable and to determine when, under*  
 7242 *guidelines that may be developed and adopted by the President, acting through the Executive Vice*  
 7243 *President and Chief Operating Officer, it is impractical to procure Leases through competition.*

#### 7244 **C. Approval of Form of Lease Required.**

7245 *The form of Leases entered into by the University shall be approved by the University's legal*  
 7246 *counsel.*

#### 7247 **D. Execution of Leases.**

7248 *All Leases entered into by the University shall be executed only by those University officers or*  
 7249 *persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as*  
 7250 *may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as*  
 7251 *may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital*  
 7252 *Projects adopted by the Board as part of the Management Agreement between the Commonwealth and*  
 7253 *the University, no other University approval shall be required for leases or leasing, nor state approval*  
 7254 *required except in the case of leases of real property as may be governed by general state law in*  
 7255 *accordance with § 23-38.109 and § 23-38.112 of the Act.*

7256 E. Capital Leases.  
7257 The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization  
7258 process included in the Policy Governing Capital Projects adopted by the Board as part of the  
7259 Management Agreement between the Commonwealth and the University.

7260 F. Compliance with Applicable Law.  
7261 All Leases of real property by the University shall be consistent with any requirements of law that  
7262 are contained in the Act or are otherwise applicable.

7263 G. Certification of Occupancy.  
7264 All real property covered by an Expense Lease or leased by the University under a Capital Lease  
7265 shall be certified for occupancy by the appropriate public body or building official.

7266  
7267 EXHIBIT O  
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7270 MANAGEMENT AGREEMENT  
7271 BETWEEN  
7272 THE COMMONWEALTH OF VIRGINIA  
7273 AND  
7274 THE UNIVERSITY OF VIRGINIA  
7275 PURSUANT TO

7276 THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
7277 OF 2005  
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7279  
7280 POLICY GOVERNING  
7281 INFORMATION TECHNOLOGY  
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7284 THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
7285 POLICY GOVERNING INFORMATION TECHNOLOGY  
7286

7287 I. PREAMBLE.

7288 The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter  
7289 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions  
7290 of higher education in the Commonwealth of Virginia that have entered into a Management Agreement  
7291 with the Commonwealth "may be exempt from the provisions governing the Virginia Information  
7292 Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the  
7293 Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title  
7294 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such]  
7295 institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the  
7296 Code of Virginia. This Information Technology Policy shall become effective upon the effective date of  
7297 a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between  
7298 the Commonwealth and the University that incorporates this Policy.

7299 The Board of Visitors of the University of Virginia is authorized to adopt this Information  
7300 Technology Policy pursuant to § 23-38.111 of the Code of Virginia.

7301 II. DEFINITIONS.

7302 As used in this Information Technology Policy, the following terms have the following meanings,  
7303 unless the context requires otherwise:

7304 "Academic Division" means that part of the University known as State Agency 207.

7305 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
7306 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7307 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

7308 "College" means that part of the University operated as the University of Virginia's College at Wise,  
7309 also known as State Agency 246.

7310 "Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the  
7311 Code of Virginia as it currently exists and from time to time may be amended.

7312 "Major information technology project" or "major IT project" shall have the same meaning as set  
7313 forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

7314 "Medical Center" means that part of the University consisting of the University of Virginia Medical  
7315 Center, known as State Agency 209, and related health care and health maintenance facilities.

7316 "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

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7317 *Commonwealth of Virginia.*

7318 *"University" means the University of Virginia, consisting of the Academic Division, the College, and*  
7319 *the Medical Center.*

7320 *III. SCOPE OF POLICY.*

7321 *This Policy is intended to cover and implement the authority that may be granted to the University of*  
7322 *Virginia pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect*  
7323 *any other powers and authorities granted to the University pursuant to the Appropriation Act and the*  
7324 *Code of Virginia, including other provisions of the Act or the University's enabling legislation as that*  
7325 *term is defined in § 23-38.89 of the Act. In particular, other powers and authorities granted to the*  
7326 *University of Virginia Medical Center by law, to the extent they exceed those granted to the University*  
7327 *pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

7328 *This Policy shall govern the University's information technology strategic planning, expenditure*  
7329 *reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and*  
7330 *audits conducted within, by, or on behalf of the University. Upon the effective date of a Management*  
7331 *Agreement between the Commonwealth and the University, as authorized by subsection D of § 23-38.88*  
7332 *and § 23-38.111, therefore, the University shall be exempt from those provisions of the Code of Virginia,*  
7333 *including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies*  
7334 *Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24*  
7335 *of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology*  
7336 *strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture,*  
7337 *ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided,*  
7338 *however, that the University still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et*  
7339 *seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information*  
7340 *Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to*  
7341 *public institutions of higher education of the Commonwealth and that do not govern information*  
7342 *technology strategic planning, expenditure reporting, budgeting, project management, infrastructure,*  
7343 *architecture, ongoing operations, security, and audits within, by, or on behalf of the University.*

7344 *The procurement of information technology and telecommunications goods and services, including*  
7345 *automated data processing hardware and software, shall be governed by the Policy Governing the*  
7346 *Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials*  
7347 *approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and*  
7348 *Construction that are incorporated in and attached to that Policy.*

7349 *IV. GENERAL PROVISIONS.*

7350 *A. Board of Visitors Accountability and Delegation of Authority.*

7351 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*  
7352 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
7353 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*  
7354 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*  
7355 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*  
7356 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
7357 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*  
7358 *and procedures.*

7359 *B. Strategic Planning.*

7360 *The President, acting through the Executive Vice President and Chief Operating Officer, shall be*  
7361 *responsible for overall IT strategic planning at the University, which shall be linked to and in support*  
7362 *of the University's overall strategic plan.*

7363 *At least 45 days prior to each fiscal year, the President, acting through the Executive Vice President*  
7364 *and Chief Operating Officer, shall make available the University's IT strategic plan covering the next*  
7365 *fiscal year to the State CIO for his review and comment with regard to the consistency of the*  
7366 *University's plan with the intent of the currently published overall five-year IT strategic plan for the*  
7367 *Commonwealth developed by the State CIO pursuant to § 2.2-2007 of the Code of Virginia and into*  
7368 *which the University's plan is to be incorporated.*

7369 *C. Expenditure Reporting and Budgeting .*

7370 *The President, acting through the Executive Vice President and Chief Operating Officer, shall*  
7371 *approve and be responsible for overall IT budgeting and investments at the University. The University's*  
7372 *IT budget and investments shall be linked to and in support of the University's IT strategic plan, and*  
7373 *shall be consistent with general University policies, the Board-approved annual operating budget, and*  
7374 *other Board approvals for certain procurements.*

7375 *By October 1 of each year, the President, acting through the Executive Vice President and Chief*  
7376 *Operating Officer, shall make available to the State CIO and the Information Technology Investment*  
7377 *Board a report on the previous fiscal year's IT expenditures.*

7378 *The University shall be specifically exempt from:*

7379 Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget  
7380 requests) as it currently exists and from time to time may be amended;

7381 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as  
7382 they currently exist and from time to time may be amended; and

7383 any other substantially similar provision of the Code of Virginia governing IT expenditure reporting  
7384 and budgeting, as it currently exists and from time to time may be amended.

7385 D. Project Management.

7386 Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies,  
7387 standards, and guidelines developed by the Commonwealth or those based upon industry best practices  
7388 for project management as defined by leading IT consulting firms, leading software development firms,  
7389 or a nationally-recognized project management association, appropriately tailored to the specific  
7390 circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made  
7391 available to the Information Technology Investment Board.

7392 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
7393 oversee the management of all University IT projects. IT projects may include, but are not limited to,  
7394 upgrades to network infrastructure, provision of technology to support research, database development,  
7395 implementation of new applications, and development of IT services for students, faculty, staff, and  
7396 patients. Day-to-day management of projects shall be the responsibility of appointed project directors  
7397 and shall be in accord with the project management policies, standards, and guidelines adopted by the  
7398 Board, as amended and revised from time to time.

7399 On a quarterly basis, the President, acting through the Executive Vice President and Chief Operating  
7400 Officer, shall report to the Information Technology Investment Board on the budget, schedule, and  
7401 overall status of the University's major IT projects. This requirement shall not apply to research  
7402 projects, research initiatives, or instructional programs.

7403 The President, acting through the Executive Vice President and Chief Operating Officer, shall be  
7404 responsible for decisions to substantially alter a project's scope, budget, or schedule after initial  
7405 approval.

7406 The University shall be specifically exempt from:

7407 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project  
7408 management) as it currently exists and from time to time may be amended;

7409 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management)  
7410 as they currently exist and from time to time may be amended; and

7411 any other substantially similar provision of the Code of Virginia governing IT project management,  
7412 as it currently exists or from time to time may be amended.

7413 The State CIO and the Information Technology Investment Board shall continue to have the authority  
7414 regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of  
7415 § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall  
7416 continue to provide the University with reasonable notice of, and a reasonable opportunity to correct,  
7417 any identified problems before a project is terminated.

7418 E. Infrastructure, Architecture, Ongoing Operations, and Security.

7419 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines  
7420 related to IT infrastructure, architecture, ongoing operations, and security developed by the  
7421 Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific  
7422 circumstances of the University. Copies of the policies shall be made available to the Information  
7423 Technology Investment Board.

7424 The President, acting through the executive Vice President and Chief Operating Officer, shall be  
7425 responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended  
7426 and revised from time to time.

7427 For purposes of implementing this Policy, the President shall appoint an existing University  
7428 employee to serve as a liaison between the University and the State CIO.

7429 F. Audits.

7430 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines  
7431 developed by the Commonwealth or those based upon industry best practices for project auditing as  
7432 defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing  
7433 association, appropriately tailored to the specific circumstances of the University, which provide for  
7434 Independent Validation and Verification ("IV&V") of the University's major IT projects. Copies of the  
7435 policies, standards, and guidelines, as amended and revised from time to time, shall be made available  
7436 to the Information Technology Investment Board.

7437 Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure,  
7438 architecture, ongoing operations, and security, shall also be the responsibility of the University's  
7439 Internal Audit Department and the Auditor of Public Accounts.

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EXHIBIT P

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

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

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING THE PROCUREMENT OF  
GOODS, SERVICES, INSURANCE AND CONSTRUCTION  
AND THE DISPOSITION OF SURPLUS MATERIALS

I. PREAMBLE.

A. Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) provided the University of Virginia with autonomy to conduct the procurement of goods and services, including professional services, and construction, on behalf of the University of Virginia Medical Center. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that the University of Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing 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.

- 7502 *"Effective Date" means the effective date of the Management Agreement.*
- 7503 *"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of*
- 7504 *Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and*
- 7505 *missions of the individual public institutions of higher education of the Commonwealth, and as provided*
- 7506 *in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.*
- 7507 *"Existing Medical Center Policy Statement" means the Policy Statement Governing Exercise of*
- 7508 *Procurement Autonomy by the University on behalf of the Medical Center adopted in 1996 by the Board*
- 7509 *of Visitors for the Medical Center.*
- 7510 *"Goods" means all material, equipment, supplies, and printing, including information technology and*
- 7511 *telecommunications goods such as automated data processing hardware and software.*
- 7512 *"Management Agreement" means the agreement required by subsection D of § 23-38.88 between the*
- 7513 *Commonwealth of Virginia and the University of Virginia.*
- 7514 *"Medical Center" means that part of the University consisting of the University of Virginia Medical*
- 7515 *Center, known as state agency 209, and related health care and health maintenance facilities.*
- 7516 *"Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction"*
- 7517 *attached to this Policy as Attachment 1.*
- 7518 *"Services" as used in this Policy means any work performed by an independent contractor wherein*
- 7519 *the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of*
- 7520 *equipment, materials and supplies, and shall include both professional services, which include the*
- 7521 *practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and*
- 7522 *nonprofessional services, which include any service not specifically identified as professional services.*
- 7523 *"Surplus materials" means personal property including, but not limited to, materials, supplies,*
- 7524 *equipment and recyclable items, that are determined to be surplus by the University.*
- 7525 *"University" means the University of Virginia, consisting of the Academic Division, the College, and*
- 7526 *the Medical Center.*
- 7527 **III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**
- 7528 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*
- 7529 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*
- 7530 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*
- 7531 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*
- 7532 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*
- 7533 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*
- 7534 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*
- 7535 *and procedures.*
- 7536 **IV. GENERAL PROVISIONS.**
- 7537 **A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement**
- 7538 **Policies.**
- 7539 *The Academic Division and the College, through its administrative relationship with the University,*
- 7540 *have had decentralization and pilot program autonomy in many procurement functions and activities*
- 7541 *since the Appropriation Act of 1994. Effective July 1, 1996, the University was granted autonomy to*
- 7542 *establish a procurement system for the Medical Center, and the Board of Visitors approved the Existing*
- 7543 *Medical Center Policy Statement. The Act extends and reinforces the autonomy previously granted to*
- 7544 *the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the*
- 7545 *Board of Visitors to enable the University to develop a procurement system for the Academic Division*
- 7546 *and the College, as well as a surplus materials disposition system for the University as a whole, and to*
- 7547 *continue the existing procurement system and policies of the Medical Center. Any University electronic*
- 7548 *procurement system, other than the Medical Center's electronic procurement system, shall integrate or*
- 7549 *interface with the Commonwealth's electronic procurement system.*
- 7550 *This Policy shall be effective on the Effective Date of the University's initial Management Agreement*
- 7551 *with the Commonwealth. The implementing policies and procedures adopted by the President, acting*
- 7552 *through the Executive Vice President and Chief Operating Officer or his designee, to implement this*
- 7553 *Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting*
- 7554 *procurements at the University, including policies regarding the nature and amounts of procurements*
- 7555 *that may be undertaken without the approval of the Board of Visitors, or of the President, acting*
- 7556 *through the Executive Vice President and Chief Operating Officer.*
- 7557 **B. Scope and Purpose of University Procurement Policies.**
- 7558 *This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be*
- 7559 *the policy of the University that procurements conducted by the University result in the purchase of high*
- 7560 *quality goods and services at reasonable prices, and that the University be free, to the maximum extent*
- 7561 *permitted by law and this Policy, from constraining policies that hinder the ability of the University to*
- 7562 *do business in a competitive environment. This Policy, together with the Rules Governing Procurement*

7563 of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to  
7564 all procurements undertaken by the University, regardless of the source of funds.

7565 C. Collaboration, Communication, and Cooperation with the Commonwealth.

7566 The University is committed to developing, maintaining, and sustaining collaboration,  
7567 communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy,  
7568 particularly with the Offices of the Secretaries of Administration and Technology, the Department of  
7569 General Services, and the Virginia Information Technologies Agency. Identifying business objectives and  
7570 goals common to both the University and the Commonwealth and the mechanisms by which such  
7571 objectives and goals may be jointly pursued and achieved are among the desired outcomes of such  
7572 collaboration, communication, and cooperation.

7573 D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.

7574 The University is committed to maximizing its internal operational efficiencies, economies of scale  
7575 among institutions of higher education, and the leveraged buying power of the Commonwealth as a  
7576 whole.

7577 Consistent with this commitment, the University:

7578 i) may purchase from and participate in all statewide contracts for goods and services, including  
7579 information technology goods and services, except that the University shall purchase from and  
7580 participate in contracts for communications services and telecommunications facilities entered into by  
7581 the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an  
7582 exception is provided in the Appropriation Act or by other law, and provided that orders not placed  
7583 through statewide contracts shall be processed directly or by integration or interface through the  
7584 Commonwealth's electronic procurement system;

7585 ii) shall use directly or by integration or interface the Commonwealth's electronic procurement  
7586 system and comply with the business plan for the Commonwealth's electronic procurement system, as  
7587 modified by an agreement between the Commonwealth and the University, which agreement shall not be  
7588 substantially different than the agreement attached to this Policy as Attachment 2 ; and

7589 iii) shall adopt a small, woman-owned, and minority-owned ("SWAM") business program that is  
7590 consistent with the Commonwealth's SWAM program.

7591 E. Implementation.

7592 To effect its implementation under the Act, and if the University remains in continued substantial  
7593 compliance with the terms and conditions of this Management Agreement with the Commonwealth  
7594 pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the University's  
7595 procurement of goods, services, insurance, and construction, and the disposition of surplus materials  
7596 shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2,  
7597 except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information  
7598 Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the Information Technology  
7599 Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency  
7600 requirements regarding disposition of surplus materials and distribution of proceeds from the sale or  
7601 recycling of surplus materials in §§ 2.2-1124 and 1125; the requirement to purchase from the  
7602 Department for the Blind and Vision Impaired ("VIB") (§ 2.2-1117); and any other state statutes, rules,  
7603 regulations or requirements relating to the procurement of goods, services, insurance, and construction,  
7604 including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the  
7605 duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department  
7606 of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review  
7607 and the oversight by the Division of Engineering and Buildings of the Virginia Department of General  
7608 Services of contracts for the construction of University capital projects and construction-related  
7609 professional services (§ 2.2-1132).

7610 V. UNIVERSITY PROCUREMENT POLICIES.

7611 A. General Competitive Principles.

7612 In connection with University procurements and the processes leading to award of contracts for  
7613 goods, services, insurance, and construction, the University is committed to:

7614 seeking competition to the maximum practical degree, taking into account the size of the anticipated  
7615 procurement, the term of the resulting contract and the likely extent of competition;

7616 conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or  
7617 the appearance of any impropriety;

7618 making procurement rules clear in advance of any competition;

7619 providing access to the University's business to all qualified vendors, firms and contractors, with no  
7620 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage  
7621 in cooperative procurements and to meet special needs of the University;

7622 ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular  
7623 vendor; and

7624 providing for the free exchange of information between the University, vendors, firms or contractors

7625 *concerning the goods or services sought and offered while preserving the confidentiality of proprietary*  
7626 *information.*

7627 *B. Access to Records.*

7628 *Procurement records shall be available to citizens or to interested persons, firms or corporations in*  
7629 *accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et*  
7630 *seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to*  
7631 *§ 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia*  
7632 *Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.*

7633 *C. Cooperative Procurements and Alliances.*

7634 *In circumstances where the University determines and documents that statewide contracts for goods*  
7635 *and services, including information technology and telecommunications goods and services, do not*  
7636 *provide goods and services to the University that meet its business goals and objectives, the University*  
7637 *is authorized to participate in cooperative procurements with other public or private organizations or*  
7638 *entities, including other educational institutions, public-private partnerships, public bodies, charitable*  
7639 *organizations, health care provider alliances and purchasing organizations, so long as the resulting*  
7640 *contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing*  
7641 *Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1*  
7642 *and the purposes of this Policy will be furthered. In the event the University engages in a cooperative*  
7643 *contract with a private organization or public-private partnership and the contract was not competitively*  
7644 *procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods,*  
7645 *Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by*  
7646 *other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the*  
7647 *above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's*  
7648 *electronic procurement system, including the requirement for payment of applicable fees. By October 1*  
7649 *of each year, the President, acting through the Executive Vice President and Chief Operating Officer,*  
7650 *shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit*  
7651 *and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and*  
7652 *alliances entered into or used during the prior fiscal year.*

7653 *D. Training; Ethics in Contracting.*

7654 *The President, acting through the Executive Vice President and Chief Operating Officer, shall take*  
7655 *all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged*  
7656 *in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of*  
7657 *the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement*  
7658 *Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only*  
7659 *officials authorized by this Policy and any procedures adopted by the President, acting through the*  
7660 *Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and*  
7661 *engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

7662 *The University shall maintain an ongoing program to provide professional development opportunities*  
7663 *to its buying staff and to provide methods training to internal staff who are engaged in placing*  
7664 *decentralized small purchase transactions.*

7665 *E. Ethics and University Procurements.*

7666 *In implementing the authority conferred by this Policy, the personnel administering any procurement*  
7667 *shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting*  
7668 *provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title*  
7669 *2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31*  
7670 *(§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et*  
7671 *seq.) of Chapter 12 of Title 18.2.*

7672 **VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.**

7673 *The policy and procedures for disposal for surplus materials shall provide for the sale,*  
7674 *environmentally-appropriate disposal, or recycling of surplus materials by the University and the*  
7675 *retention of the resulting proceeds by the University.*

7676 **VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND**  
7677 **PROCEDURES.**

7678 *The President, acting through the Executive Vice President and Chief Operating Officer or his*  
7679 *designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures*  
7680 *for the Academic Division and the College, which, in addition to the Rules, implement applicable*  
7681 *provisions of law and this Policy. University procurements shall be carried out in accordance with this*  
7682 *Policy, the Rules, and any implementing policies and procedures adopted by the University. The*  
7683 *implementing policies and procedures (i) shall include the delegation of procurement authority by the*  
7684 *Board to appropriate University officials who shall oversee University procurements of goods, services,*  
7685 *insurance, and construction, including a grant of authority to such officials to engage in further*

7686 *delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the*  
 7687 *competitive principles set forth in Part V above.*

7688 *Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall*  
 7689 *become effective on the Effective Date of the University's initial Management Agreement with the*  
 7690 *Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the*  
 7691 *University on behalf of the University for goods, services, insurance, and construction. This Policy, the*  
 7692 *Rules, and any implementing policies and procedures adopted by the University shall not affect existing*  
 7693 *contracts already in effect.*

7694 *The Rules and University implementing policies and procedures for all University procurements of*  
 7695 *goods, services, insurance, and construction, and the disposition of surplus property shall be*  
 7696 *substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of*  
 7697 *Higher Education and their Vendors in their form as of the effective date of this Policy and as amended*  
 7698 *or changed in the future, and with University procedures specific to the Acquisition of Goods and*  
 7699 *Services. The Rules and University implementing policies and procedures shall implement a system of*  
 7700 *competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including*  
 7701 *professional services as defined in the Rules, insurance, and construction.*

7702 **VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

7703 **A. Protests, Appeals and Debarment.**

7704 *The Rules and University implementing policies and procedures for procurements other than capital*  
 7705 *outlay shall include a process or processes for an administrative appeal by vendors, firms or*  
 7706 *contractors. Protests and appeals may challenge determinations of vendor, firm or contractor*  
 7707 *non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are*  
 7708 *filed within the times specified by the Rules. Remedies available shall be limited to reversal of the*  
 7709 *action challenged or, where a contract already being performed is declared void, compensation for the*  
 7710 *cost of performance up to the time of such declaration. The Rules and University implementing policies*  
 7711 *and procedures also may establish the basis and process for debarment of any vendor, firm or*  
 7712 *contractor.*

7713 **B. Prompt Payment of Contractors and Subcontractors.**

7714 *The Rules and University implementing policies and procedures shall include provisions related to*  
 7715 *prompt payment of outstanding invoices, which shall include payment of interest on properly-presented*  
 7716 *invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the*  
 7717 *lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The*  
 7718 *payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or*  
 7719 *the date established by the contract. All contracts also shall require prompt payment of subcontractors*  
 7720 *by the general contractor, upon receipt of payment by the University.*

7721 **C. Types of Procurements.**

7722 *The Rules and University implementing policies and procedures shall implement a system of*  
 7723 *competitive negotiation for professional services, as defined in the Rules, and shall implement*  
 7724 *purchasing procedures developed to maximize competition given the size and duration of the contract,*  
 7725 *and the needs of the University. Such policies and procedures may include special provisions for*  
 7726 *procurements such as emergency procurements, sole source procurements, brand name procurements,*  
 7727 *small purchases, procurements in which only one qualified vendor responds, and others.*

7728 **D. Approval and Public Notice of Procurements**

7729 *The Rules and University implementing policies and procedures shall provide for approval of*  
 7730 *solicitation documents by an authorized individual and for reasonable public notice of procurements,*  
 7731 *given the size and nature of the need and the applicability of any Virginia Freedom of Information Act*  
 7732 *exemption.*

7733 **E. Administration of Contracts.**

7734 *The Rules and University implementing policies and procedures shall contain provisions related to*  
 7735 *the administration of contracts, including contract claims, modifications, extensions and assignments.*

7736 **F. Non-Discrimination.**

7737 *The Rules and University implementing policies and procedures shall provide for a*  
 7738 *non-discriminatory procurement process that prohibits discrimination because of race, religion, color,*  
 7739 *sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall*  
 7740 *include appropriate provisions to effectuate fair and reasonable consideration of women-owned,*  
 7741 *minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

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**ATTACHMENT I**

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

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

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

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

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

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

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

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

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

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

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

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

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

*3. a. Procurement of professional services. The procurement of professional services for capital*

7809 projects shall be conducted using a qualification-based selection process. The Institution shall engage  
7810 in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on  
7811 the basis of initial responses and with emphasis on professional competence, to provide the required  
7812 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to  
7813 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed  
7814 project, as well as alternative concepts. The Request for Proposal shall not, however, request that  
7815 offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may  
7816 discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and  
7817 where appropriate, nonbinding estimates of price for services. Proprietary information from competing  
7818 offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined  
7819 in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all  
7820 information developed in the selection process to this point, the Institution shall select in the order of  
7821 preference two or more offerors whose professional qualifications and proposed services are deemed  
7822 most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a  
7823 contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair  
7824 and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror  
7825 ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and  
7826 so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution  
7827 determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror  
7828 is clearly more highly qualified and suitable than the others under consideration, a contract may be  
7829 negotiated and awarded to that offeror.

7830 A contract for architectural or professional engineering services relating to construction projects may  
7831 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience  
7832 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under  
7833 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of  
7834 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the  
7835 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set  
7836 in the Request for Proposal. Any unused amounts from any contract term may be carried forward.  
7837 Competitive negotiations for such contracts may result in awards to more than one offeror provided the  
7838 Request for Proposal stated the potential for a multi-vendor award.

7839 Multiphase professional services contracts satisfactory and advantageous to the Institution for  
7840 environmental, location, design and inspection work regarding construction of infrastructure projects  
7841 may be negotiated and awarded based on qualifications at a fair and reasonable price for the first  
7842 phase only, when completion of the earlier phases is necessary to provide information critical to the  
7843 negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such  
7844 contract, the Institution shall state the anticipated intended total scope of the project and determine in  
7845 writing that the nature of the work is such that the best interests of such Institution require awarding  
7846 the contract.

7847 b. Procurement of other than professional services. Selection shall be made of two or more offerors  
7848 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the  
7849 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
7850 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered,  
7851 but need not be the sole determining factor. After negotiations have been conducted with each offeror  
7852 so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and  
7853 shall award the contract to that offeror. When the terms and conditions of multiple awards are so  
7854 provided in the Request for Proposal, awards may be made to more than one offeror. Should the  
7855 Institution determine in writing and in its sole discretion that only one offeror has made the best  
7856 proposal, a contract may be negotiated and awarded to that offeror.

7857 "Competitive sealed bidding" is a method of contractor selection, other than for professional  
7858 services, which includes the following elements:

7859 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications  
7860 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided  
7861 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite  
7862 qualifications of potential contractors. When it is impractical to prepare initially a purchase description  
7863 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of  
7864 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been  
7865 qualified under the criteria set forth in the first solicitation.

7866 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by  
7867 publication on the Department of General Services' central electronic procurement website. Public  
7868 notice also may be published in a newspaper of general circulation or on other appropriate websites, or  
7869 both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations  
7870 shall include businesses selected from a list made available by the Department of Minority Business

- 7871 *Enterprise.*
- 7872 3. *Public opening and announcement of all bids received.*
- 7873 4. *Evaluation of bids based upon the requirements set forth in the invitation, which may include*
- 7874 *special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria*
- 7875 *such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose,*
- 7876 *which are helpful in determining acceptability.*
- 7877 5. *Award to the lowest responsive and responsible bidder. When the terms and conditions of*
- 7878 *multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*
- 7879 *"Construction" means building, altering, repairing, improving or demolishing any structure, building*
- 7880 *or highway, and any draining, dredging, excavation, grading or similar work upon real property.*
- 7881 *"Construction management contract" means a contract in which a party is retained by the owner to*
- 7882 *coordinate and administer contracts for construction services for the benefit of the owner, and may also*
- 7883 *include, if provided in the contract, the furnishing of construction services to the owner.*
- 7884 *"Covered Institution" or "Institution" means, on and after the effective date of the initial management*
- 7885 *agreement with the Commonwealth of Virginia, a public institution of higher education of the*
- 7886 *Commonwealth that has entered into a management agreement with the Commonwealth to be governed*
- 7887 *by the provisions of Subchapter 3 of the Restructuring Act.*
- 7888 *"Design-build contract" means a contract between the Institution and another party in which the*
- 7889 *party contracting with the Institution agrees to both design and build the structure, roadway or other*
- 7890 *item specified in the contract.*
- 7891 *"Goods" means all material, equipment, supplies, and printing, including information technology and*
- 7892 *telecommunications goods such as automated data processing hardware and software.*
- 7893 *"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of*
- 7894 *the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or*
- 7895 *delivery schedule for the goods, services or construction being procured.*
- 7896 *"Multiphase professional services contract" means a contract for the providing of professional*
- 7897 *services where the total scope of work of the second or subsequent phase of the contract cannot be*
- 7898 *specified without the results of the first or prior phase of the contract.*
- 7899 *"Nonprofessional services" means any services not specifically identified as professional services in*
- 7900 *the definition of professional services and includes small construction projects valued not over*
- 7901 *\$1,000,000; provided that subdivision 3a of the definition of "competitive negotiation" in this section*
- 7902 *shall still apply to professional services for such small construction projects.*
- 7903 *"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who,*
- 7904 *at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the*
- 7905 *sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured*
- 7906 *under the contract, and who at such time is eligible and qualified in all respects to perform that*
- 7907 *contract, and who would have been eligible and qualified to submit a bid or proposal had the contract*
- 7908 *been procured through competitive sealed bidding or competitive negotiation.*
- 7909 *"Professional services" means work performed by an independent contractor within the scope of the*
- 7910 *practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,*
- 7911 *dentistry, medicine, optometry, pharmacy or professional engineering.*
- 7912 *"Public body" means any legislative, executive or judicial body, agency, office, department, authority,*
- 7913 *post, commission, committee, institution, board or political subdivision created by law to exercise some*
- 7914 *sovereign power or to perform some governmental duty, and empowered by law to undertake the*
- 7915 *activities described in these Rules.*
- 7916 *"Public contract" means an agreement between the Institution and a nongovernmental source that is*
- 7917 *enforceable in a court of law.*
- 7918 *"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform*
- 7919 *fully the contract requirements and the moral and business integrity and reliability that will assure good*
- 7920 *faith performance, and who has been prequalified, if required.*
- 7921 *"Responsive bidder" means a person who has submitted a bid that conforms in all material respects*
- 7922 *to the Invitation to Bid.*
- 7923 *"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative*
- 7924 *Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*
- 7925 *"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction*
- 7926 *adopted by the governing body of the Covered Institution.*
- 7927 *"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified*
- 7928 *goods or nonprofessional services through real-time electronic bidding, with the award being made to*
- 7929 *the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed*
- 7930 *and bidders shall have the opportunity to modify their bid prices for the duration of the time period*
- 7931 *established for bid opening.*

7932 "Services" means any work performed by an independent contractor wherein the service rendered  
7933 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials  
7934 and supplies.

7935 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working  
7936 environment and individual goals that utilizes work experience and related services for assisting the  
7937 handicapped person to progress toward normal living and a productive vocational status.

7938 § 5. Methods of procurement. -

7939 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for  
7940 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,  
7941 or competitive negotiation as provided in this section, unless otherwise authorized by law.

7942 B. Professional services shall be procured by competitive negotiation. Qualification-based selection  
7943 shall be used for design services.

7944 C. Goods, services, or insurance may be procured by competitive negotiation.

7945 D. Construction may be procured only by competitive sealed bidding, except that competitive  
7946 negotiation may be used in the following instances upon a determination made in advance by the  
7947 Institution and set forth in writing that competitive sealed bidding is either not practicable or not  
7948 fiscally advantageous to the public, which writing shall document the basis for this determination:

7949 1. By the Institution on a fixed price design-build basis or construction management basis under  
7950 § 7;

7951 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;

7952 3. By the Institution for the construction of highways and any draining, dredging, excavation,  
7953 grading or similar work upon real property; or

7954 E. Upon a determination in writing that there is only one source practicably available for that  
7955 which is to be procured, a contract may be negotiated and awarded to that source without competitive  
7956 sealed bidding or competitive negotiation. The writing shall document the basis for this determination.  
7957 The Institution shall issue a written notice stating that only one source was determined to be practicably  
7958 available, and identifying that which is being procured, the contractor selected, and the date on which  
7959 the contract was or will be awarded. This notice shall be posted in a designated public area, which may  
7960 be the Department of General Services' website for the Commonwealth's central electronic procurement  
7961 system, or published in a newspaper of general circulation on the day the Institution awards or  
7962 announces its decision to award the contract, whichever occurs first. Public notice shall also be  
7963 published on the Department of General Services' website for the Commonwealth's central electronic  
7964 procurement system and may be published on other appropriate websites.

7965 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
7966 competitive negotiation; however, such procurement shall be made with such competition as is  
7967 practicable under the circumstances. A written determination of the basis for the emergency and for the  
7968 selection of the particular contractor shall be included in the contract file. The Institution shall issue a  
7969 written notice stating that the contract is being awarded on an emergency basis, and identifying that  
7970 which is being procured, the contractor selected, and the date on which the contract was or will be  
7971 awarded. This notice shall be posted in a designated public area, which may be the Department of  
7972 General Services' website for the Commonwealth's central electronic procurement system, or published  
7973 in a newspaper of general circulation on the day the Institution awards or announces its decision to  
7974 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may  
7975 also be published on the Department of General Services' website for the Commonwealth's central  
7976 electronic procurement system and other appropriate websites.

7977 G. The Institution may establish purchase procedures, if adopted in writing, not requiring  
7978 competitive sealed bids or competitive negotiation for single or term contracts for goods and services  
7979 other than professional services if the aggregate or the sum of all phases is not expected to exceed  
7980 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

7981 H. The Institution may establish purchase procedures, if adopted in writing, not requiring  
7982 competitive negotiation for single or term contracts for professional services if the aggregate or the sum  
7983 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide  
7984 for competition wherever practicable.

7985 I. Upon a determination made in advance by the Institution and set forth in writing that the  
7986 purchase of goods, products or commodities from a public auction sale is in the best interests of the  
7987 public, such items may be purchased at the auction, including online public auctions. The writing shall  
7988 document the basis for this determination.

7989 J. The purchase of goods or nonprofessional services, but not construction or professional services,  
7990 may be made by reverse auctioning.

7991 § 6. Cooperative procurement. -

7992 A. In circumstances where the Institution determines and documents that statewide contracts for  
7993 goods and services, including information technology and telecommunications goods and services, do

7994 not provide goods and services to the Institution that meet its business goals and objectives, the  
 7995 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement  
 7996 arrangement on behalf of or in conjunction with public bodies, public or private health or educational  
 7997 institutions, other public or private organizations or entities, including public-private partnerships,  
 7998 charitable organizations, health care provider alliances or purchasing organizations or entities, or with  
 7999 public agencies or institutions or group purchasing organizations of the several states, territories of the  
 8000 United States, or the District of Columbia, for the purpose of combining requirements to effect cost  
 8001 savings or reduce administrative expense in any acquisition of goods and services, other than  
 8002 professional services. The Institution may purchase from any authority, department, agency, institution,  
 8003 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not  
 8004 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to  
 8005 bid specified that the procurement was being conducted on behalf of other public bodies. In such  
 8006 instances, deviation from the procurement procedures set forth in these Rules and the administrative  
 8007 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of  
 8008 the above, use of cooperative contracts shall conform to the business requirements of the  
 8009 Commonwealth's electronic procurement system, including the requirement for payment of applicable  
 8010 fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee  
 8011 that will allow for participation in any such arrangement.

8012 B. In circumstances where statewide contracts for goods and services, including information  
 8013 technology and telecommunications goods and services, do not provide goods and services to meet the  
 8014 Institution's business goals and objectives, and as authorized by the United States Congress and  
 8015 consistent with applicable federal regulations, and provided the terms of the contract permit such  
 8016 purchases:

8017 1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services  
 8018 Administration contract or a contract awarded by any other agency of the U.S. government; and

8019 2. The Institution may purchase telecommunications and information technology goods and  
 8020 nonprofessional services from a U.S. General Services Administration contract or a contract awarded by  
 8021 any other agency of the U.S. government.

8022 § 7. Design-build or construction management contracts authorized. -

8023 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed  
 8024 price design-build basis or construction management basis in accordance with the provisions of this  
 8025 section.

8026 B. Procurement of construction by the design-build or construction management method shall be a  
 8027 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their  
 8028 qualifications. Based upon the information submitted and any other relevant information which the  
 8029 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be  
 8030 selected by the Commonwealth and requested to submit proposals.

8031 § 8. Modification of the contract. -

8032 A. A contract awarded by the Institution may include provisions for modification of the contract  
 8033 during performance, but no fixed-price contract may be increased by more than twenty-five percent of  
 8034 the amount of the contract or \$50,000, whichever is greater, without the advance written approval of  
 8035 the Institution's president or his designee. In no event may the amount of any contract, without  
 8036 adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror  
 8037 from the consequences of an error in its bid or offer.

8038 B. The Institution may extend the term of an existing contract for services to allow completion of  
 8039 any work undertaken but not completed during the original term of the contract.

8040 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract  
 8041 modifications.

8042 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

8043 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
 8044 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis  
 8045 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the  
 8046 Institution shall include businesses selected from a list made available by the Department of Minority  
 8047 Business Enterprise.

8048 B. The Institution shall establish programs consistent with this section to facilitate the participation  
 8049 of small businesses and businesses owned by women and minorities in procurement transactions. The  
 8050 programs established shall be in writing and shall include cooperation with the Department of Minority  
 8051 Business Enterprise, the United States Small Business Administration, and other public or private  
 8052 agencies. The Institution shall submit annual progress reports on minority business procurement to the  
 8053 Department of Minority Business Enterprise.

8054 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive

8055 analysis that documents a statistically significant disparity between the availability and utilization of  
8056 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require  
8057 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing  
8058 law.

8059 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
8060 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination  
8061 that employing ex-offenders on the specific contract is not in its best interest.

8062 § 10. Employment discrimination by contractor prohibited; required contract provisions. - The  
8063 Institution shall include in every contract of more than \$10,000 the following provisions:

8064 1. During the performance of this contract, the contractor agrees as follows:

8065 a. The contractor will not discriminate against any employee or applicant for employment because  
8066 of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law  
8067 relating to discrimination in employment, except where there is a bona fide occupational qualification  
8068 reasonably necessary to the normal operation of the contractor. The contractor agrees to post in  
8069 conspicuous places, available to employees and applicants for employment, notices setting forth the  
8070 provisions of this nondiscrimination clause.

8071 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the  
8072 contractor, will state that such contractor is an equal opportunity employer.

8073 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation  
8074 shall be deemed sufficient for the purpose of meeting the requirements of this section.

8075 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every  
8076 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
8077 subcontractor or vendor.

8078 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The  
8079 Institution shall include in every contract over \$10,000 the following provisions:

8080 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace  
8081 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for  
8082 employment, a statement notifying employees that the unlawful manufacture, sale, distribution,  
8083 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's  
8084 workplace and specifying the actions that will be taken against employees for violations of such  
8085 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the  
8086 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the  
8087 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be  
8088 binding upon each subcontractor or vendor.

8089 For the purposes of this section, "drug-free workplace" means a site for the "performance of work  
8090 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the  
8091 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,  
8092 dispensation, possession or use of any controlled substance or marijuana during the performance of the  
8093 contract.

8094 § 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a  
8095 certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or  
8096 manufacturer named and shall be deemed to convey the general style, type, character, and quality of the  
8097 article desired. Any article that the Institution in its sole discretion determines to be the equal of that  
8098 specified, considering quality, workmanship, economy of operation, and suitability for the purpose  
8099 intended, shall be accepted.

8100 § 13. Comments concerning specifications. - The Institution shall establish procedures whereby  
8101 comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal  
8102 can be received and considered prior to the time set for receipt of bids or proposals or award of the  
8103 contract.

8104 § 14. Prequalification generally; prequalification for construction. -

8105 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or  
8106 construction, and consideration of bids or proposals limited to prequalified contractors. Any  
8107 prequalification procedure shall be established in writing and sufficiently in advance of its  
8108 implementation to allow potential contractors a fair opportunity to complete the process.

8109 B. Any prequalification of prospective contractors for construction by the Institution shall be  
8110 pursuant to a prequalification process for construction projects adopted by the Institution. The process  
8111 shall be consistent with the provisions of this section.

8112 The application form used in such process shall set forth the criteria upon which the qualifications  
8113 of prospective contractors will be evaluated. The application form shall request of prospective  
8114 contractors only such information as is appropriate for an objective evaluation of all prospective  
8115 contractors pursuant to such criteria. The form shall allow the prospective contractor seeking  
8116 prequalification to request, by checking the appropriate box, that all information voluntarily submitted

8117 by the contractor pursuant to this subsection shall be considered a trade secret or proprietary  
8118 information subject to the provisions of subsection D of § 34 of these Rules.

8119 In all instances in which the Institution requires prequalification of potential contractors for  
8120 construction projects, advance notice shall be given of the deadline for the submission of  
8121 prequalification applications. The deadline for submission shall be sufficiently in advance of the date  
8122 set for the submission of bids for such construction so as to allow the procedures set forth in this  
8123 subsection to be accomplished.

8124 At least thirty days prior to the date established for submission of bids or proposals under the  
8125 procurement of the contract for which the prequalification applies, the Institution shall advise in writing  
8126 each contractor who submitted an application whether that contractor has been prequalified. In the  
8127 event that a contractor is denied prequalification, the written notification to the contractor shall state  
8128 the reasons for the denial of prequalification and the factual basis of such reasons.

8129 A decision by the Institution denying prequalification under the provisions of this subsection shall be  
8130 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

8131 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the  
8132 following:

8133 1. The contractor does not have sufficient financial ability to perform the contract that would result  
8134 from such procurement. If a bond is required to ensure performance of a contract, evidence that the  
8135 contractor can acquire a surety bond from a corporation included on the United States Treasury list of  
8136 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to  
8137 establish the financial ability of the contractor to perform the contract resulting from such procurement;

8138 2. The contractor does not have appropriate experience to perform the construction project in  
8139 question;

8140 3. The contractor or any officer, director or owner thereof has had judgments entered against him  
8141 within the past ten years for the breach of contracts for governmental or nongovernmental construction,  
8142 including, but not limited to, design-build or construction management;

8143 4. The contractor has been in substantial noncompliance with the terms and conditions of prior  
8144 construction contracts with the Institution without good cause. If the Institution has not contracted with  
8145 a contractor in any prior construction contracts, the Institution may deny prequalification if the  
8146 contractor has been in substantial noncompliance with the terms and conditions of comparable  
8147 construction contracts with another public body without good cause. The Institution may not utilize this  
8148 provision to deny prequalification unless the facts underlying such substantial noncompliance were  
8149 documented in writing in the prior construction project file and such information relating thereto given  
8150 to the contractor at that time, with the opportunity to respond;

8151 5. The contractor or any officer, director, owner, project manager, procurement manager or chief  
8152 financial official thereof has been convicted within the past ten years of a crime related to governmental  
8153 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6  
8154 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental  
8155 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  
8156 substantially similar law of the United States or another state;

8157 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an  
8158 established debarment procedure from bidding or contracting by any public body, agency of another  
8159 state or agency of the federal government; and

8160 7. The contractor failed to provide to the Institution in a timely manner any information requested  
8161 by the Institution relevant to subdivisions 1 through 6 of this subsection.

8162 § 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid  
8163 from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest  
8164 responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to  
8165 obtain a contract price within available funds. However, the negotiation may be undertaken only under  
8166 conditions and procedures described in writing and approved by the Institution prior to issuance of the  
8167 Invitation to Bid and summarized therein.

8168 § 16. Cancellation, rejection of bids; waiver of informalities. -

8169 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or  
8170 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of  
8171 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,  
8172 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a  
8173 particular responsive and responsible bidder or offeror.

8174 B. The Institution may waive informalities in bids.

8175 § 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no  
8176 insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus  
8177 lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to

8178 *the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall*  
8179 *preclude the Institution from debaring a prospective insurer pursuant to § 18.*

8180 § 18. *Debarment. - Prospective contractors may be debarred from contracting for particular types of*  
8181 *supplies, services, insurance or construction, for specified periods of time. Any debarment procedure*  
8182 *shall be established in writing by the Institution. Any debarment procedure may provide for debarment*  
8183 *on the basis of a contractor's unsatisfactory performance for the Institution.*

8184 § 19. *Purchase programs for recycled goods; Institution responsibilities. -*

8185 A. *The Institution may implement a purchase program for recycled goods and may coordinate its*  
8186 *efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8 of*  
8187 *the Code of Virginia and §§ 20 and 22 of these Rules.*

8188 B. *The Department of Environmental Quality, with advice from the Virginia Recycling Markets*  
8189 *Development Council, shall advise the Institution concerning the designation of recycled goods.*

8190 § 20. *Preference for Virginia products with recycled content and for Virginia firms. -*

8191 A. *In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or*  
8192 *services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be*  
8193 *decided by lot.*

8194 B. *Whenever any bidder is a resident of any other state and such state under its laws allows a*  
8195 *resident contractor of that state a preference, a like preference may be allowed by the Institution to the*  
8196 *lowest responsive and responsible bidder who is a resident of Virginia.*

8197 C. *Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where*  
8198 *goods are being offered, and existing price preferences have already been taken into account, preference*  
8199 *shall be given to the bidder whose goods contain the greatest amount of recycled content.*

8200 § 21. *Preference for Virginia coal used in the Institution. - In determining the award of any contract*  
8201 *for coal to be purchased for use in the Institution with state funds, the Institution shall procure using*  
8202 *competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering*  
8203 *coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price*  
8204 *of the low responsive and responsible bidder offering coal mined elsewhere.*

8205 § 22. *Preference for recycled paper and paper products used by the Institution. -*

8206 A. *In determining the award of any contract for paper and paper products to be purchased for use*  
8207 *by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable*  
8208 *for the purpose intended, so long as the price is not more than ten percent greater than the price of the*  
8209 *low responsive and responsible bidder or offeror offering a product that does not qualify under*  
8210 *subsection B.*

8211 B. *For purposes of this section, recycled paper and paper products means any paper or paper*  
8212 *products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

8213 § 23. *Withdrawal of bid due to error. -*

8214 A. *A bidder for a public construction contract, other than a contract for construction or*  
8215 *maintenance of public highways, may withdraw his bid from consideration if the price bid was*  
8216 *substantially lower than the other bids due solely to a mistake in the bid, provided the bid was*  
8217 *submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and*  
8218 *was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of*  
8219 *work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error*  
8220 *or unintentional omission can be clearly shown by objective evidence drawn from inspection of original*  
8221 *work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

8222 *If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from*  
8223 *consideration if the price bid would have been substantially lower than the other bids due solely to the*  
8224 *clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of*  
8225 *work, labor or material made directly in the compilation of a bid that shall be clearly shown by*  
8226 *objective evidence drawn from inspection of original work papers, documents and materials used in the*  
8227 *preparation of the bid sought to be withdrawn.*

8228 *One of the following procedures for withdrawal of a bid shall be selected by the Institution and*  
8229 *stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to*  
8230 *withdraw his bid within two business days after the conclusion of the bid opening procedure and shall*  
8231 *submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or*  
8232 *designated official his original work papers, documents and materials used in the preparation of the bid*  
8233 *within one day after the date fixed for submission of bids. The work papers shall be delivered by the*  
8234 *bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either*  
8235 *instance, the work papers, documents and materials may be considered as trade secrets or proprietary*  
8236 *information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened*  
8237 *one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder*  
8238 *shall have two hours after the opening of bids within which to claim in writing any mistake as defined*  
8239 *herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour*

8240 period has elapsed. The mistake shall be proved only from the original work papers, documents and  
8241 materials delivered as required herein.

8242 B. The Institution may establish procedures for the withdrawal of bids for other than construction  
8243 contracts.

8244 C. No bid shall be withdrawn under this section when the result would be the awarding of the  
8245 contract on another bid of the same bidder or of another bidder in which the ownership of the  
8246 withdrawing bidder is more than five percent.

8247 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed  
8248 to be the low bid.

8249 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or  
8250 labor to or perform any subcontract or other work agreement for the person or firm to whom the  
8251 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for  
8252 which the withdrawn bid was submitted.

8253 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify  
8254 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the  
8255 bid price, provided such bidder is a responsible and responsive bidder.

8256 § 24. Contract Pricing Arrangements. -

8257 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other  
8258 basis that is not prohibited by these Rules.

8259 B. Except in case of emergency affecting the public health, safety or welfare, no public contract  
8260 shall be awarded on the basis of cost plus a percentage of cost.

8261 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis  
8262 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in  
8263 whole or part as a percentage of such claims, shall not be prohibited by this section.

8264 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

8265 A. No contractor shall perform any work on a construction project of the Institution unless he (i)  
8266 has obtained, and continues to maintain for the duration of the work, workers' compensation coverage  
8267 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides  
8268 prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

8269 B. The Department of General Services shall provide the form to the Institution. Failure of the  
8270 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)  
8271 of subsection A.

8272 C. No subcontractor shall perform any work on a construction project of the Institution unless he  
8273 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage  
8274 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

8275 § 26. Retainage on construction contracts. -

8276 A. In any contract issued by the Institution for construction that provides for progress payments in  
8277 installments based upon an estimated percentage of completion, the contractor shall be paid at least  
8278 ninety-five percent of the earned sum when payment is due, with no more than five percent being  
8279 retained to ensure faithful performance of the contract. All amounts withheld may be included in the  
8280 final payment.

8281 B. Any subcontract for a public project that provides for similar progress payments shall be subject  
8282 to the provisions of this section.

8283 § 27. Public construction contract provisions barring damages for unreasonable delays declared  
8284 void. -

8285 A. Any provision contained in any public construction contract of the Institution that purports to  
8286 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable  
8287 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the  
8288 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to  
8289 causes within their control shall be void and unenforceable as against public policy.

8290 B. Subsection A shall not be construed to render void any provision of a public construction  
8291 contract awarded by the Institution that:

8292 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the  
8293 contractor, or its subcontractors, agents or employees;

8294 2. Requires notice of any delay by the party claiming the delay;

8295 3. Provides for liquidated damages for delay; or

8296 4. Provides for arbitration or any other procedure designed to settle contract disputes.

8297 C. A contractor making a claim against the Institution for costs or damages due to the alleged  
8298 delaying of the contractor in the performance of its work under any public construction contract of the  
8299 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the  
8300 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage

8301 shall be equal to the percentage of the contractor's total delay claim that is determined through  
8302 litigation or arbitration to be false or to have no basis in law or in fact.

8303 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of  
8304 the contractor in the performance of work under any public construction contract for the Institution, it  
8305 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to  
8306 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution  
8307 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is  
8308 determined through litigation or arbitration to have been made in bad faith.

8309 § 28. Bid bonds. -

8310 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of  
8311 \$1,000,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is  
8312 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he  
8313 will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not  
8314 exceed five percent of the amount bid.

8315 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for  
8316 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

8317 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids  
8318 or proposals for construction contracts anticipated to be less than \$1,000,000.

8319 § 29. Performance and payment bonds. -

8320 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1,000,000  
8321 awarded to any prime contractor or (ii) public construction contract exceeding \$1,000,000 awarded to  
8322 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,  
8323 structures or other improvements to real property owned by the Institution, the contractor shall furnish  
8324 to the Institution the following bonds:

8325 1. Except for transportation-related projects, a performance bond in the sum of the contract amount  
8326 conditioned upon the faithful performance of the contract in strict conformity with the plans,  
8327 specifications and conditions of the contract. For transportation-related projects, such bond shall be in  
8328 a form and amount satisfactory to the Institution.

8329 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of  
8330 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom  
8331 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the  
8332 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor  
8333 supplied or performed in the furtherance of the work.

8334 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but  
8335 only for periods when the equipment rented is actually used at the site.

8336 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor  
8337 that are authorized to do business in Virginia.

8338 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

8339 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

8340 E. Nothing in this section shall preclude the Institution from requiring payment or performance  
8341 bonds for construction contracts below \$1,000,000.

8342 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish  
8343 a payment bond with surety thereon in the sum of the full amount of the contract with such  
8344 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are  
8345 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the  
8346 work provided for in the subcontract.

8347 § 30. Alternative forms of security. -

8348 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash  
8349 escrow in the face amount required for the bond.

8350 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the  
8351 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain  
8352 designated funds in the face amount required for the bid, payment or performance bond. Approval shall  
8353 be granted only upon a determination that the alternative form of security proffered affords protection  
8354 to the Institution equivalent to a corporate surety's bond.

8355 § 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or  
8356 performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for  
8357 Proposal.

8358 § 32. Action on performance bond. - No action against the surety on a performance bond shall be  
8359 brought by the Institution unless brought within one year after (i) completion of the contract, including  
8360 the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty  
8361 that gave rise to the action.

8362 § 33. Actions on payment bonds; waiver of right to sue. -

8363 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished  
 8364 material in accordance with the contract documents in furtherance of the work provided in any contract  
 8365 for which a payment bond has been given, and who has not been paid in full before the expiration of 90  
 8366 days after the day on which the claimant performed the last of the labor or furnished the last of the  
 8367 materials for which he claims payment, may bring an action on the payment bond to recover any  
 8368 amount due him for the labor or material. The obligee named in the bond need not be named a party  
 8369 to the action.

8370 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no  
 8371 contractual relationship, express or implied, with the contractor, may bring an action on the  
 8372 contractor's payment bond only if he has given written notice to the contractor within 180 days from the  
 8373 day on which the claimant performed the last of the labor or furnished the last of the materials for  
 8374 which he claims payment, stating with substantial accuracy the amount claimed and the name of the  
 8375 person for whom the work was performed or to whom the material was furnished. Notice to the  
 8376 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to  
 8377 such contractor at any place where his office is regularly maintained for the transaction of business.  
 8378 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not  
 8379 be subject to the time limitations stated in this subsection.

8380 C. Any action on a payment bond shall be brought within one year after the day on which the  
 8381 person bringing such action last performed labor or last furnished or supplied materials.

8382 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless  
 8383 it is in writing, signed by the person whose right is waived, and executed after such person has  
 8384 performed labor or furnished material in accordance with the contract documents.

8385 § 34. Public inspection of certain records. -

8386 A. Except as provided in this section, all proceedings, records, contracts and other public records  
 8387 relating to procurement transactions shall be open to the inspection of any citizen, or any interested  
 8388 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et  
 8389 seq.).

8390 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution  
 8391 shall not be open to public inspection.

8392 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect  
 8393 bid records within a reasonable time after the opening of all bids but prior to award, except in the  
 8394 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,  
 8395 bid records shall be open to public inspection only after award of the contract.

8396 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect  
 8397 proposal records within a reasonable time after the evaluation and negotiations of proposals are  
 8398 completed but prior to award, except in the event that the Institution decides not to accept any of the  
 8399 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection  
 8400 only after award of the contract.

8401 E. Any inspection of procurement transaction records under this section shall be subject to  
 8402 reasonable restrictions to ensure the security and integrity of the records.

8403 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in  
 8404 connection with a procurement transaction or prequalification application submitted pursuant to  
 8405 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et  
 8406 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to  
 8407 or upon submission of the data or other materials, (ii) identify the data or other materials to be  
 8408 protected, and (iii) state the reasons why protection is necessary.

8409 § 35. Exemption for certain transactions. -

8410 A. The provisions of these Rules shall not apply to:

8411 1. The selection of services related to the management and investment of the Institution's endowment  
 8412 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be  
 8413 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by  
 8414 § 23-76.1.

8415 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the  
 8416 Institution. However, such purchase procedures shall provide for competition where practicable.

8417 3. Procurement of any construction or planning and design services for construction by the  
 8418 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
 8419 obligated to conform to procurement procedures that are established by federal statutes or regulations,  
 8420 whether or not those federal procedures are in conformance with the provisions of these Rules.

8421 4. The University of Virginia Medical Center.

8422 5. The purchase of goods and services by the Institution when such purchases are made under a  
 8423 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

8424 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
 8425 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
 8426 regulations not in conformance with the provisions of these Rules, the Institution may comply with such  
 8427 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination  
 8428 of the Institution's President or his designee that acceptance of the grant or contract funds under the  
 8429 applicable conditions is in the public interest. Such determination shall state the specific provision of  
 8430 these Rules in conflict with the conditions of the grant or contract.

8431 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

8432 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into  
 8433 contracts with faith-based organizations for the purposes described in this section on the same basis as  
 8434 any other nongovernmental source without impairing the religious character of such organization, and  
 8435 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

8436 B. For the purposes of this section, "faith-based organization" means a religious organization that is  
 8437 or applies to be a contractor to provide goods or services for programs funded by the block grant  
 8438 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
 8439 104-193.

8440 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this  
 8441 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's  
 8442 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based  
 8443 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of  
 8444 religious freedom by the recipients of such goods, services, or disbursements.

8445 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
 8446 purchase orders prominently display a nondiscrimination statement indicating that it does not  
 8447 discriminate against faith-based organizations.

8448 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any  
 8449 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on  
 8450 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on  
 8451 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as  
 8452 other organizations that contract with public bodies to account for the use of the funds provided;  
 8453 however, if the faith-based organization segregates public funds into separate accounts, only the  
 8454 accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in  
 8455 clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

8456 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,  
 8457 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent  
 8458 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to  
 8459 expenditures pursuant to contracts, if any, for the services of chaplains.

8460 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization  
 8461 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based  
 8462 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of  
 8463 a particular religion.

8464 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant  
 8465 to a contract between the Institution and a faith-based organization, objects to the religious character of  
 8466 the faith-based organization from which the individual receives or would receive the goods, services, or  
 8467 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date  
 8468 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

8469 The Institution shall provide to each individual who applies for or receives goods, services, or  
 8470 disbursements provided pursuant to a contract between the Institution and a faith-based organization a  
 8471 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based  
 8472 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's  
 8473 charitable or religious character, practices, or expression. No provider of services may discriminate  
 8474 against you on the basis of religion, a religious belief, or your refusal to actively participate in a  
 8475 religious practice. If you object to a particular provider because of its religious character, you may  
 8476 request assignment to a different provider. If you believe that your rights have been violated, please  
 8477 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

8478 § 37. Exemptions from competition for certain transactions. - The Institution may enter into  
 8479 contracts without competition, as that term is described in subsections A through J of § 5 (Methods of  
 8480 procurement) of these Rules, for:

8481 1. The purchase of goods or services that are produced or performed by or related to:

8482 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the  
 8483 Blind and Vision Impaired;

8484 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or  
 8485 supported employment services serving the handicapped;

- 8486 c. Private educational institutions; or  
8487 d. Other public educational institutions.  
8488 2. Speakers and performing artists;  
8489 3. Memberships and Association dues;  
8490 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of  
8491 goods or services by the Institution;  
8492 5. Group travel in foreign countries;  
8493 6. Conference facilities and services;  
8494 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,  
8495 registration and tournament fees;  
8496 8. Royalties; or  
8497 9. The purchase of legal services, provided that the Office of the Attorney General has been  
8498 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.  
8499 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain  
8500 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility  
8501 service without competitive sealed bidding or competitive negotiation if purchased through an  
8502 association of which the Institution is a member if the association was formed and is maintained for the  
8503 purpose of promoting the interest and welfare of and developing close relationships with similar public  
8504 bodies, provided such association has procured the insurance or electric utility services by use of  
8505 competitive principles and provided that the Institution has made a determination in advance after  
8506 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive  
8507 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this  
8508 determination.  
8509 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning:  
8510 "Contractor" means the entity that has a direct contract with the Institution.  
8511 "Debtor" means any individual, business, or group having a delinquent debt or account with any  
8512 state agency that obligation has not been satisfied or set aside by court order or discharged in  
8513 bankruptcy.  
8514 "Payment date" means either (i) the date on which payment is due under the terms of a contract for  
8515 provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days  
8516 after receipt of a proper invoice by the Institution or its agent or (b) thirty days after receipt of the  
8517 goods or services by the Institution..  
8518 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor  
8519 to whom the contract was awarded or to any subcontractor in the performance of the work provided for  
8520 in such contract.  
8521 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment  
8522 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.  
8523 § 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the  
8524 provisions of § 26 relating to retainage shall remain valid.  
8525 § 42. Prompt payment of bills by the Institution. -  
8526 A. The Institution shall promptly pay for the completely delivered goods or services by the required  
8527 payment date.  
8528 Payment shall be deemed to have been made when offset proceedings have been instituted, as  
8529 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).  
8530 B. Separate payment dates may be specified for contracts under which goods or services are  
8531 provided in a series of partial deliveries or executions to the extent that such contract provides for  
8532 separate payment for such partial delivery or execution.  
8533 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where  
8534 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall  
8535 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by  
8536 the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods  
8537 or services.  
8538 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made  
8539 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these  
8540 Rules.  
8541 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall  
8542 include:  
8543 1. A payment clause that obligates the contractor to take one of the two following actions within  
8544 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the  
8545 subcontractor under that contract:  
8546 a. Pay the subcontractor for the proportionate share of the total payment received from the

8547 Institution attributable to the work performed by the subcontractor under that contract; or  
8548 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of  
8549 the subcontractor's payment with the reason for nonpayment.

8550 2. A payment clause that requires (i) individual contractors to provide their social security numbers  
8551 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification  
8552 numbers.

8553 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all  
8554 amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor  
8555 of payment from the Institution for work performed by the subcontractor under that contract, except for  
8556 amounts withheld as allowed in subdivision 1.

8557 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,  
8558 interest shall accrue at the rate of one percent per month."

8559 Any such contract awarded shall further require the contractor to include in each of its subcontracts  
8560 a provision requiring each subcontractor to include or otherwise be subject to the same payment and  
8561 interest requirements with respect to each lower-tier subcontractor.

8562 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment  
8563 clause in this section shall not be construed to be an obligation of the Institution. A contract  
8564 modification shall not be made for the purpose of providing reimbursement for the interest charge. A  
8565 cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

8566 § 46. Interest penalty; exceptions. -

8567 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by  
8568 the Institution to a vendor that remain unpaid after seven days following the payment date. However,  
8569 nothing in this section shall affect any contract providing for a different rate of interest, or for the  
8570 payment of interest in a different manner.

8571 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on  
8572 corporate loans (prime rate) at large United States money center commercial banks as reported daily in  
8573 the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of  
8574 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of  
8575 interest established pursuant to § 58.1-1812 of the Code of Virginia.

8576 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed  
8577 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of  
8578 delivery of goods or services or the accuracy of any invoice received for the goods or services. The  
8579 exception from the interest penalty provided by this subsection shall apply only to that portion of a  
8580 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of  
8581 the disagreement.

8582 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the  
8583 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a  
8584 contractor from receiving interest on such funds under an approved escrow agreement.

8585 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or  
8586 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the  
8587 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the  
8588 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is  
8589 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue  
8590 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven  
8591 days following the payment date.

8592 § 47. Ineligibility. -

8593 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from  
8594 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the  
8595 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the  
8596 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,  
8597 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so  
8598 requested by the bidder within five business days after receipt of the notice.

8599 Within ten business days after receipt of the notice, the bidder may submit rebuttal information  
8600 challenging the evaluation. The Institution shall issue its written determination of disqualification or  
8601 ineligibility based on all information in the possession of the Institution, including any rebuttal  
8602 information, within five business days of the date the Institution received such rebuttal information.

8603 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to  
8604 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the  
8605 evaluation reveals that the bidder should be refused permission to participate, or disqualified from  
8606 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The  
8607 notice shall state the basis for the determination, which shall be final unless the bidder appeals the  
8608 decision within ten days after receipt of the notice by invoking administrative procedures meeting the

8609 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided  
8610 in § 54.

8611 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in  
8612 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be  
8613 restoration of eligibility.

8614 § 48. Appeal of denial of withdrawal of bid. -

8615 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final  
8616 and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by  
8617 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by  
8618 instituting legal action as provided in § 54.

8619 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,  
8620 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the  
8621 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released  
8622 only upon a final determination that the bidder was entitled to withdraw the bid.

8623 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an  
8624 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the  
8625 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation  
8626 to Bid, the sole relief shall be withdrawal of the bid.

8627 § 49. Determination of nonresponsibility. -

8628 A. Following public opening and announcement of bids received on an Invitation to Bid, the  
8629 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed  
8630 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent  
8631 low bidder is responsible. If the Institution so determines, then it may proceed with an award in  
8632 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution  
8633 determines that the apparent low bidder is not responsible, it shall proceed as follows:

8634 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify  
8635 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for  
8636 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that  
8637 relate to the determination, if so requested by the bidder within five business days after receipt of the  
8638 notice.

8639 2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information  
8640 challenging the evaluation. The Institution shall issue its written determination of responsibility based  
8641 on all information in the possession of the Institution, including any rebuttal information, within five  
8642 business days of the date the Institution received the rebuttal information. At the same time, the  
8643 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

8644 3. Such notice shall state the basis for the determination, which shall be final unless the bidder  
8645 appeals the decision within ten days after receipt of the notice by invoking administrative procedures  
8646 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action  
8647 as provided in § 54.

8648 The provisions of this subsection shall not apply to procurements involving the prequalification of  
8649 bidders and the rights of any potential bidders under such prequalification to appeal a decision that  
8650 such bidders are not responsible.

8651 B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the  
8652 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in  
8653 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or  
8654 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the  
8655 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or  
8656 directed award as provided in subsection A of § 54, or both.

8657 If it is determined that the decision of the Institution was not an honest exercise of discretion, but  
8658 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable  
8659 state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract  
8660 has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

8661 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract  
8662 shall proceed under this section, and may not protest the award or proposed award under the  
8663 provisions of § 50 of these Rules.

8664 D. Nothing contained in this section shall be construed to require the Institution, when procuring by  
8665 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed  
8666 to be the most advantageous.

8667 § 50. Protest of award or decision to award. -

8668 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall  
8669 submit the protest in writing to the Institution, or an official designated by the Institution, no later than

8670 ten days after the award or the announcement of the decision to award, whichever occurs first. Public  
8671 notice of the award or the announcement of the decision to award shall be given by the Institution in  
8672 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any  
8673 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to  
8674 protest the award or decision to award such contract shall submit the protest in the same manner no  
8675 later than ten days after posting or publication of the notice of such contract as provided in § 5 of these  
8676 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part  
8677 upon information contained in public records pertaining to the procurement transaction that are subject  
8678 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall  
8679 expire ten days after those records are available for inspection by such bidder or offeror under § 34, or  
8680 at such later time as provided in this section. No protest shall lie for a claim that the selected bidder  
8681 or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the  
8682 protest and the relief sought. The Institution or designated official shall issue a decision in writing  
8683 within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or  
8684 offeror appeals within ten days of receipt of the written decision by invoking administrative procedures  
8685 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action  
8686 as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the  
8687 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of  
8688 Alternative Dispute Resolution ("ADR") shall constitute an administrative appeal procedure meeting the  
8689 standards of § 55 of these Rules.

8690 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then  
8691 the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise  
8692 it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary  
8693 or capricious, then the sole relief shall be as hereinafter provided.

8694 Where the award has been made but performance has not begun, the performance of the contract  
8695 may be enjoined. Where the award has been made and performance has begun, the Institution may  
8696 declare the contract void upon a finding that this action is in the best interest of the public. Where a  
8697 contract is declared void, the performing contractor shall be compensated for the cost of performance  
8698 up to the time of such declaration. In no event shall the performing contractor be entitled to lost  
8699 profits.

8700 C. Where the Institution, an official designated by it, or an appeals board determines, after a  
8701 hearing held following reasonable notice to all bidders, that there is probable cause to believe that a  
8702 decision to award was based on fraud or corruption or on an act in violation of these Rules, the  
8703 Institution, designated official or appeals board may enjoin the award of the contract to a particular  
8704 bidder.

8705 § 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the  
8706 validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be  
8707 affected by the fact that a protest or appeal has been filed.

8708 § 52. Stay of award during protest. - An award need not be delayed for the period allowed a bidder  
8709 or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing  
8710 of a timely legal action as provided in § 54, no further action to award the contract shall be taken  
8711 unless there is a written determination that proceeding without delay is necessary to protect the public  
8712 interest or unless the bid or offer would expire.

8713 § 53. Contractual disputes. -

8714 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than  
8715 sixty days after final payment. However, written notice of the contractor's intention to file a claim shall  
8716 be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing  
8717 herein shall preclude a contract from requiring submission of an invoice for final payment within a  
8718 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of  
8719 claims shall not delay payment of amounts agreed due in the final payment.

8720 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.  
8721 Such procedure, which may be contained in the contract or may be specifically incorporated into the  
8722 contract by reference and made available to the contractor, shall establish a time limit for a final  
8723 decision in writing by the Institution. If the Institution has established administrative procedures  
8724 meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or  
8725 specifically incorporated in the contract by reference and made available to the contractor. The  
8726 Institution may require the submission of contractual claims pursuant to any contract to Alternative  
8727 Dispute Resolution ("ADR") as an administrative procedure.

8728 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these  
8729 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's  
8730 decision on the claim, unless the Institution fails to render such decision within the time specified in the  
8731 contract.

8732 *D. The decision of the Institution shall be final and conclusive unless the contractor appeals within*  
 8733 *six months of the date of the final decision on the claim by the Institution by invoking administrative*  
 8734 *procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting*  
 8735 *legal action as provided in § 54.*

8736 *§ 54. Legal actions. -*

8737 *A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from*  
 8738 *participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder*  
 8739 *or offeror for a particular contract, may bring an action in the appropriate circuit court challenging*  
 8740 *that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an*  
 8741 *honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the*  
 8742 *Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation*  
 8743 *to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of*  
 8744 *prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder,*  
 8745 *having been previously determined by the Institution to be not responsible in accordance with § 4, is*  
 8746 *found by the court to be a responsible bidder, the court may direct the Institution to award the contract*  
 8747 *to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

8748 *B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the*  
 8749 *appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes*  
 8750 *that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary*  
 8751 *or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,*  
 8752 *or the terms or conditions of the Invitation to Bid.*

8753 *C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a*  
 8754 *sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award*  
 8755 *or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit*  
 8756 *court challenging a proposed award or the award of a contract, which shall be reversed only if the*  
 8757 *petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,*  
 8758 *but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable*  
 8759 *state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

8760 *D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting*  
 8761 *of reasonable security to protect the Institution.*

8762 *E. A contractor may bring an action involving a contract dispute with the Institution in the*  
 8763 *appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be*  
 8764 *named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of*  
 8765 *Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of*  
 8766 *Accounts.*

8767 *F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards*  
 8768 *of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or*  
 8769 *contractor, the procedures shall be exhausted prior to instituting legal action concerning the same*  
 8770 *procurement transaction unless the Institution agrees otherwise.*

8771 *G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a*  
 8772 *contractor.*

8773 *§ 55. Administrative appeals procedure. -*

8774 *A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to*  
 8775 *award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from*  
 8776 *disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes*  
 8777 *arising during the performance of a contract, or (v) any of these. Such administrative procedure may*  
 8778 *include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a*  
 8779 *disinterested person or panel, the opportunity to present pertinent information and the issuance of a*  
 8780 *written decision containing findings of fact. The disinterested person or panel shall not be an employee*  
 8781 *of the governmental entity against whom the claim has been filed. The findings of fact shall be final*  
 8782 *and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious;*  
 8783 *(b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the*  
 8784 *findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14*  
 8785 *of these Rules. No determination on an issue of law shall be final if appropriate legal action is*  
 8786 *instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute*  
 8787 *Resolution Council in establishing an Alternative Dispute Resolution ("ADR") procedure.*

8788 *B. Any party to the administrative procedure, including the Institution, shall be entitled to institute*  
 8789 *judicial review if such action is brought within thirty days of receipt of the written decision.*

8790 *§ 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes*  
 8791 *arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and*  
 8792 *other alternative dispute resolution procedures. However, such procedures shall be nonbinding and*

8793 subject to § 2.2-514 of the Code of Virginia, as applicable.

8794 § 57. Ethics in public contracting. - The Institution and its governing body, officers and employees  
8795 shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement  
8796 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

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

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

II. Initially, all non-exempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format.

Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.

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

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

V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense. The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.

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

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

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

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

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

8855 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9  
 8856 information will be supported in eVA in such a way as to provide CoVA verified vendor information to  
 8857 entities. The University will have the option to receive a subset of vendor related data. Until an  
 8858 enterprise W-9 process is established, the University will be responsible for collection of W-9  
 8859 information.

8860 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at  
 8861 least six (6) months prior to change or as soon as any new plan is proposed) with the University  
 8862 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that  
 8863 may affect the technical changes described herein.

8864 IX. Integration of the University's electronic procurement solution with the University's ERP is the  
 8865 responsibility of the University. The solution must provide for orders, change orders and cancellations.

8866 Guidelines

8867 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for  
 8868 electronic procurement between the University and the CoVA.

8869 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of  
 8870 8PM and 4AM. eVA will transmit registered vendor orders it receives within fifteen minutes or less.

8871 3. Non-exempt orders to un-registered vendors are to be transmitted to eVA for loading to the Data  
 8872 Warehouse. The University shall be responsible for payment of all eVA transaction fees for non-exempt  
 8873 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and  
 8874 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements  
 8875 for unregistered vendor orders.

8876 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA  
 8877 standard format.

8878 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

8879 6. eVA Interface standard does not currently support PCard orders; however these orders may be  
 8880 processed via the interface as (a) confirming orders or (b) orders for pcards on file with the vendor.

8881 Schedule

8882 The University shall implement this agreement no later than December 2006.

8883 Metrics

8884 A. The University shall comply with the following Governor's eVA Management

8885 Objective

8886 95% of all non-exempt orders to be processed by eVA. Includes non-exempt orders issued by end  
 8887 users (PCard & LPO) and the central purchasing office. Non-exempt orders to unregistered vendors  
 8888 received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood  
 8889 that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory  
 8890 processing through eVA. All non-exempt orders not processed by eVA shall be reported on the eVA  
 8891 Dashboard and the corresponding non-use fee paid by the University.

8892 B. The University shall meet the following management objectives for electronic procurement:

8893 1. Provide end users, including purchase-card users, access to an electronic system for buying;

8894 2. Conduct business with eVA registered vendors whenever possible;

8895 3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers  
 8896 electronically using eVA;

8897 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar  
 8898 value, that include commodity codes, complete item descriptions, quantities, and unit prices;

8899 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five  
 8900 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and  
 8901 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the  
 8902 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to  
 8903 monitor the usage of confirming orders with the objective of reducing their numbers to the extent  
 8904 possible.

8905 The University agrees that, for confirming orders, it will resolve any vendor dispute, including  
 8906 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such  
 8907 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or  
 8908 CGI-AMS.

8909 The University further agrees that:

8910 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the  
 8911 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed  
 8912 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

8913 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)  
 8914 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

8915 c. In the event the University does not provide resolution notification to the eVA Business Manager

- 8916 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment  
 8917 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.  
 8918 6. Timely process electronic change orders and cancellations;  
 8919 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA web site except  
 8920 as specifically exempted by DPS;  
 8921 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to  
 8922 end users using the ERP/SciQuest Integration system. The University will be responsible for the  
 8923 accuracy of contract catalog pricing loaded into the ERP/SciQuest.  
 8924 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post  
 8925 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10  
 8926 below);  
 8927 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate  
 8928 commodities, when such are identified.  
 8929 11. Complete and certify the monthly eVA Dashboard Report, and  
 8930 12. Timely remit any eVA transaction and non-use fees incurred by the institution.  
 8931 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.  
 8932 The University shall assure that payments to CGI-AMS are current.

8933  
 8934 **EXHIBIT Q**

8935  
 8936 **MANAGEMENT AGREEMENT**  
 8937 **BETWEEN**  
 8938 **THE COMMONWEALTH OF VIRGINIA**  
 8939 **AND**  
 8940 **THE UNIVERSITY OF VIRGINIA**  
 8941 **PURSUANT TO**

8942 **THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT**  
 8943 **OF 2005**

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 8945  
 8946 **POLICY GOVERNING**  
 8947 **HUMAN RESOURCES FOR**  
 8948 **PARTICIPATING COVERED EMPLOYEES**  
 8949 **AND OTHER UNIVERSITY EMPLOYEE**

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 8953 **THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA**  
 8954 **POLICY GOVERNING HUMAN RESOURCES FOR**  
 8955 **PARTICIPATING COVERED EMPLOYEES**  
 8956 **AND OTHER UNIVERSITY EMPLOYEES**

8957 **I. PREAMBLE.**

8958 Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389,  
 8959 respectively) grant the University of Virginia authority regarding the adoption of an alternative human  
 8960 resources system and alternative retirement, health care and other insurance plans for University of  
 8961 Virginia Medical Center employees. Further, the Restructured Higher Education Financial and  
 8962 Administrative Operations Act (the "Act"), Chapter 4.10 of Title 23 of the Code of Virginia, establishes  
 8963 a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and  
 8964 provides that upon becoming a Covered Institution, the University shall have responsibility and  
 8965 accountability for human resources management for all University employees, defined in the Act as  
 8966 "Covered Employees," who pursuant to subsection A of § 23-38.114 of the Act "are state employees of"  
 8967 the University. Specifically, the Act provides that, as of the Effective Date of its initial Management  
 8968 Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the  
 8969 Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall  
 8970 be subject to the policies and procedures prescribed by the Virginia Department of Human Resource  
 8971 Management, provided that they may subsequently elect to become Participating Covered Employees.  
 8972 All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29  
 8973 (§ 2.2-2900 et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees  
 8974 subject to the Virginia Personnel Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were  
 8975 subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation  
 8976 plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to  
 8977 procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions,

8978 continue to participate in either state- or University-sponsored benefit plans as described by the  
8979 Management Agreement.

8980 The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law  
8981 and constitute the human resources policies to be included in any human resources system adopted by  
8982 the University for its employees.

8983 This Policy is intended to cover the authority that may be granted to the University pursuant to  
8984 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the  
8985 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act  
8986 and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers  
8987 and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed  
8988 those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy  
8989 Statement.

8990 **II. DEFINITIONS.**

8991 As used in this policy, the following terms shall have the following meanings, unless the context  
8992 requires otherwise:

8993 "Academic Division" means that part of the University known as State Agency 207.

8994 "Academic Division Human Resources System" means the human resources system for Academic  
8995 Division employees as provided for herein.

8996 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
8997 Chapter 4.10 of Title 23 of the Code of Virginia.

8998 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

8999 "Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29  
9000 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by  
9001 the Virginia Department of Human Resource Management and who are not Participating Covered  
9002 Employees.

9003 "College" means that part of the University operated as the University of Virginia's College at Wise  
9004 (State Agency 246).

9005 "College Human Resources System" means the human resources system for College employees as  
9006 provided for herein.

9007 "Covered Employee" means any person who is employed by the University on either a salaried or  
9008 non-salaried (wage) basis.

9009 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement  
9010 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that  
9011 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of  
9012 Subchapter 3 of the Act.

9013 "Employee" means Covered Employee unless the context clearly indicates otherwise.

9014 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
9015 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
9016 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  
9017 case of the University of Virginia Medical Center.

9018 "Effective Date" means the effective date of the initial Management Agreement between the  
9019 University and the Commonwealth.

9020 "Existing Medical Center Policy Statement" means the Policy Statement Governing the Exercise of  
9021 Medical Center Personnel Autonomy adopted by the Board of Visitors in 1996.

9022 "Governing Law" means the Act and the University's Enabling Legislation.

9023 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act  
9024 between the University and the Commonwealth.

9025 "Medical Center" means that part of the University consisting of the University of Virginia Medical  
9026 Center (State Agency 209), and related health care and health maintenance facilities.

9027 "Medical Center Human Resources System" means the human resources system for Medical Center  
9028 employees as provided for herein.

9029 "Participating Covered Employee" means (i) all salaried nonfaculty University employees who were  
9030 employed as of the day prior to the Effective Date of the University's initial Management Agreement  
9031 with the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be  
9032 governed by such human resources program or programs, plans, policies, and procedures established by  
9033 [the Participating Institution], (ii) all salaried nonfaculty University employees who are employed by the  
9034 University on or after the Effective Date of the initial Management Agreement between the University  
9035 and the Commonwealth, (iii) all non-salaried nonfaculty University employees without regard to when  
9036 they were hired, (iv) all faculty University employees without regard to when they were hired, and (v)  
9037 all employees of the University of Virginia Medical Center without regard to when they were hired.

9038 "Systems" mean collectively the Academic Division Human Resources System, the College Human

9039 *Resources System, and the Medical Center Human Resources System that are in effect from time to time.*  
9040 *"University" means the University of Virginia, consisting of the Academic Division, the College, and*  
9041 *the Medical Center.*

9042 *"University employee" means a Covered Employee.*

### 9043 *III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.*

9044 *The University has had human resources system autonomy through decentralization and codified*  
9045 *autonomy for its employees for some time. For example, general faculty at the University are expressly*  
9046 *exempt from the Virginia Personnel Act. The Academic Division and the College have had*  
9047 *decentralization in most human resources functions and activities since the late 1980s and early 1990s,*  
9048 *including, but not limited to, the running of payrolls; the administration of hiring, classification, and*  
9049 *promotion practices; the administration of separate health insurance and retirement plans. Effective*  
9050 *July 1, 1996, all Medical Center employees were exempted from the Virginia Personnel Act and the*  
9051 *policies and procedures of the Virginia Department of Human Resource Management (formerly the*  
9052 *Department of Personnel and Training). The Board of Visitors approved the Existing Medical Center*  
9053 *Policy Statement in 1996. A separate human resources system is in place for all Medical Center*  
9054 *employees, which the Board of Visitors hereby continues, recognizing that the human resources needs of*  
9055 *the Medical Center differ in certain respects from those of the Academic Division and the College.*

9056 *The Act extends and reinforces the human resources autonomy previously granted to the University.*  
9057 *This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and*  
9058 *have in place by or after the Effective Date of its initial Management Agreement with the*  
9059 *Commonwealth, a human resources system or systems for all University employees in the Academic*  
9060 *Division and the College, and to continue the existing human resources system for Medical Center*  
9061 *employees. On that Effective Date, and until changed by the University or unless otherwise specified in*  
9062 *this Policy, the systems for University employees shall be the same systems applicable to those*  
9063 *employees in effect immediately prior to that Effective Date.*

### 9064 *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

9065 *The Board of Visitors of the University shall at all times be fully and ultimately accountable for the*  
9066 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
9067 *of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant*  
9068 *to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*  
9069 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*  
9070 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
9071 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*  
9072 *and procedures.*

### 9073 *V. UNIVERSITY OF VIRGINIA HUMAN RESOURCES SYSTEMS.*

9074 *A. Adoption and Implementation of Academic Division and College Human Resources Systems for*  
9075 *the Academic Division and the College; Continuation of Medical Center Human Resources System for*  
9076 *the Medical Center.*

9077 *The President, acting through the Executive Vice President and Chief Operating Officer, in*  
9078 *consultation with the Vice President and Provost, is hereby authorized to adopt and implement human*  
9079 *resources systems for employees of the Academic Division and for employees of the College that*  
9080 *implement and are consistent with the Governing Law, other applicable provisions of law, these*  
9081 *University human resources policies for Academic Division and College employees, and any other*  
9082 *human resources policies adopted by the Department of Human Resource Management or the Board of*  
9083 *Visitors for University personnel, unless Academic Division employees or College employees are*  
9084 *exempted from those other human resources policies by law or policy. The University Academic*  
9085 *Division and College Human Resources Systems shall include a delegation of personnel authority to*  
9086 *appropriate University officials responsible for overseeing and implementing the Academic Division and*  
9087 *College Human Resources Systems, including a grant of authority to such officials to engage in further*  
9088 *delegation of authority as the President or his designee deems appropriate.*

9089 *The University and the College commit to regularly engage employees in appropriate discussions and*  
9090 *to receive employee input as the new Academic Division and College Human Resources Systems are*  
9091 *developed. The University and the College will regularly communicate the details of new proposals to*  
9092 *all employees who are eligible to participate in the new Academic Division Human Resources System or*  
9093 *the College Human Resources System through written communication, open meetings, and website*  
9094 *postings as appropriate, so that employees will have full information that will help them evaluate the*  
9095 *merits of the new human resource system compared to the then-current State human resource system.*

9096 *Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and*  
9097 *until amended as described below, the University's human resources systems shall consist of the*  
9098 *following:*

9099 *1. the current human resources system for "Academic Division General Faculty" as posted on the*  
9100 *Vice President and Provost's web site, <http://www.virginia.edu/provost/index.html>, and periodically*

9101 amended;

9102 2. the current human resources system for "College General Faculty" as included in the University of  
9103 Virginia's College at Wise Faculty Handbook 2004-05, as periodically amended;

9104 3. the current human resources system for Classified Employees in the Academic Division and the  
9105 College as posted on the Virginia Department of Human Resource Management website at  
9106 <http://www.dhrm.state.va.us/hrpolicy/policy.html>, and the University's web site at  
9107 <http://www.hrs.virginia.edu/policies.html>, as periodically amended;

9108 4. the human resources system for Participating Covered Employees, which shall include  
9109 non-salaried (wage) employees, as posted on the University Human Resources web site,  
9110 [www.hrs.virginia.edu](http://www.hrs.virginia.edu), and periodically amended; and

9111 5. the current human resources system for Medical Center employees, which shall continue, including  
9112 the policies and procedures set forth in the University of Virginia Medical Center Human Resources  
9113 Policies and Procedures Manual, as such Manual may be amended from time to time. The Medical  
9114 Center Human Resources System is and shall continue to be consistent with Governing Law, other  
9115 provisions of applicable law, and any other human resources policies adopted by the Board of Visitors  
9116 for Medical Center employees. All current delegations of authority to University and Medical Center  
9117 officials who oversee the Medical Center Human Resources System are hereby ratified and continue.

9118 All the systems described above, except the system described in paragraph 3, may be amended by the  
9119 President, acting through the Executive Vice President and Chief Operating Officer, consistent with  
9120 these human resources policies. The system described in paragraph 3 may be amended only by the  
9121 State.

9122 B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human  
9123 Resources Policies.

9124 The President, acting through the Executive Vice President and Chief Operating Officer, shall take  
9125 all necessary and reasonable steps to assure (i) that the University officials who develop, implement and  
9126 administer the Academic Division and College Human Resources Systems and the Medical Center  
9127 Human Resources System authorized by Governing Law and these human resources policies are  
9128 knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law,  
9129 these University human resources policies, and other applicable Board of Visitors' human resources  
9130 policies affecting University employees, and (ii) that compliance with such laws and human resources  
9131 policies is achieved.

#### 9132 VI. HUMAN RESOURCES POLICIES.

9133 The Academic Division and College Human Resources Systems adopted by the University pursuant to  
9134 Governing Law and this Policy, as set forth in Section V above, as well as the Medical Center Human  
9135 Resources System, shall embody the following human resources policies and principles:

9136 A. Election by Academic Division and College Salaried Nonfaculty Employees. Upon the  
9137 adoption by the University of an Academic Division Human Resources System, or a College Human  
9138 Resources System, or both, all salaried nonfaculty University employees who were in the employment of  
9139 the Academic Division or the College, as appropriate, as of the day prior to the Effective Date of its  
9140 initial Management Agreement with the Commonwealth, except employees of the Medical Center, shall  
9141 be given written notice of their right to elect to participate in and be governed by either (i) the State  
9142 human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of  
9143 Title 2.2 of the Code of Virginia and administered by the Department of Human Resource Management,  
9144 or (ii) the Academic Division Human Resources System or the College Human Resources System, as  
9145 appropriate. A salaried nonfaculty University employee who elects to continue to be governed by the  
9146 State human resources program described above shall continue to be governed by all State human  
9147 resources and benefit plans, programs, policies and procedures that apply to and govern State  
9148 employees. A salaried nonfaculty University employee who elects in writing to participate in and be  
9149 governed by the Academic Division Human Resources System or the College Human Resources System,  
9150 as appropriate, also, by that election, shall be deemed to have elected to be eligible to participate in  
9151 and to be governed by the human resources, authorized alternative insurance, and severance plans,  
9152 programs, policies and procedures that are or may be adopted by the University as part of that  
9153 Academic Division Human Resources System or College Human Resources System, as appropriate.

9154 Each such salaried nonfaculty University employee shall be given at least 90 days to make the  
9155 election required by the prior paragraph. Such 90-day period shall begin to run on the date on which  
9156 the Academic Division Human Resources System or the College Human Resources System, as  
9157 appropriate, becomes effective for that University employee's classification of employees. If such a  
9158 salaried nonfaculty University employee does not make an election by the end of that specified election  
9159 period, that University employee shall be deemed not to have elected to participate in the Academic  
9160 Division Human Resources System or the College Human Resources System, as appropriate. If such a  
9161 salaried nonfaculty University employee elects to participate in the Academic Division Human Resources

9162 *System or the College Human Resources System, as appropriate, that election shall be irrevocable. At*  
9163 *least every two years, the University shall offer to salaried nonfaculty University employees who have*  
9164 *elected to continue to participate in the state human resources program set forth in Chapters 28*  
9165 *(§ 22.-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 an opportunity to elect to participate in the*  
9166 *Academic Division Human Resources System or the College Human Resources System, as appropriate;*  
9167 *provided that, each time prior to offering such opportunity to such salaried nonfaculty University*  
9168 *employees, and at least once every two years after the effective date of the Academic Division Human*  
9169 *Resources System or the College Human Resources System, or both, as appropriate, the University shall*  
9170 *make available to each of its salaried nonfaculty University employees a comparison of its human*  
9171 *resources program for that classification of salaried nonfaculty University employee with the State*  
9172 *human resources program for comparable State employees, including but not limited to a comparability*  
9173 *assessment of compensation and benefits. A copy of the human resources program comparison shall be*  
9174 *provided to the Department of Human Resource Management.*

9175 *B. Classification and Compensation.*

9176 *General. The Systems shall include classification and compensation plans that are fair and*  
9177 *reasonable, and are based on the availability of University financial resources. The plans adopted by*  
9178 *the University for its faculty, Medical Center employees, and other Participating Covered Employees*  
9179 *shall be independent of, and need not be based on, the classification and compensation plans of the*  
9180 *Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the*  
9181 *review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall*  
9182 *provide information on its classification and compensation plans to all University employees. The plans*  
9183 *applicable to Participating Covered Employees and Medical Center employees may or may not include*  
9184 *changes in classification or compensation announced by the Commonwealth depending on such factors*  
9185 *as the availability of necessary financial resources to fund any such changes, and subject to the review*  
9186 *and approval by the Board of Visitors of any major changes in the University's compensation plans.*

9187 *Classification Plan. The Systems shall include one or more classification plans for University*  
9188 *employees that classify positions according to job responsibilities and qualifications. On the Effective*  
9189 *Date of the University's initial Management Agreement with the Commonwealth, and until changed by*  
9190 *the University, the classification plans shall be the same plans that are in effect for each group of*  
9191 *employees immediately prior to that Effective Date.*

9192 *Compensation Plan. The Systems shall include one or more compensation plans for each University*  
9193 *employee classification or group. On the Effective Date of the University's initial Management*  
9194 *Agreement with the Commonwealth, and until changed by the Department of Human Resource*  
9195 *Management, the compensation plan for Classified Employees in the Academic Division and College*  
9196 *shall be the compensation plan in effect immediately prior to that Effective Date, known as the*  
9197 *Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the*  
9198 *University, the compensation plan or plans for all Participating Covered Employees shall be the*  
9199 *compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt*  
9200 *one or more compensation plans for Participating Covered Employees that are non-graded plan(s)*  
9201 *based on internal and external market data and other relevant factors to be determined annually. On*  
9202 *that Effective Date, and until changed by the University, the compensation plan for Medical Center*  
9203 *employees in effect immediately prior to that Effective Date shall continue as the compensation plan for*  
9204 *Medical Center employees. Any major change in compensation plans for Participating Covered*  
9205 *Employees or Medical Center employees shall be reviewed and approved by the Board of Visitors before*  
9206 *that change becomes effective. Any change recommended in the compensation plans may take into*  
9207 *account the prevailing rates in the labor market for the jobs in question, or for similar positions, the*  
9208 *relative value of jobs, the competency and skills of the individual employee, internal equity, and the*  
9209 *availability of necessary financial resources to fund the proposed change. The compensation payable to*  
9210 *University employees shall be authorized and approved only by designated University officers delegated*  
9211 *such authority by the University, and shall be consistent with the approved compensation plan for the*  
9212 *relevant position or classification. Further approval by any other State Agency, governmental body or*  
9213 *officer is not required for setting, adjusting or approving the compensation payable to individual*  
9214 *Participating Covered Employees.*

9215 *Wages. The Systems shall include policies and procedures for the authorization, computation and*  
9216 *payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and*  
9217 *call back, and for the payment of hourly employees.*

9218 *Payment of Compensation. The Systems shall include policies and procedures for paying*  
9219 *compensation to employees, including the establishment of one or more payday schedules.*

9220 *Work Schedule and Workweek. The Systems shall include policies and procedures for the*  
9221 *establishment of, and modifications to, work schedules and workweeks for all University employees,*  
9222 *including alternative work schedules and sites, and telecommuting policies and procedures.*

9223 *Other Classification and Compensation Policies and Procedures. The Systems may include any other*

9224 reasonable classification and compensation policies and procedures the President, acting through the  
 9225 Executive Vice President and Chief Operating Officer, deems appropriate.

9226 C. Benefits.

9227 The Systems shall provide fringe benefits to all benefits eligible employees, including retirement  
 9228 benefits, health care insurance, and life, disability, and accidental death and dismemberment insurance.

9229 The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may  
 9230 include an optional benefits plan for benefits eligible employees, including additional insurance  
 9231 coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance  
 9232 programs, employee intramural and recreational passes, and other wellness programs. As provided in  
 9233 subsections B and C of § 23-38.119 of the Act, the University may require Participating Covered  
 9234 Employees to pay all or a portion of the cost of group life, disability and accidental death and  
 9235 dismemberment insurance, which may be collected through a payroll deduction program. Participating  
 9236 Covered Employees shall not be required to present evidence of insurability for basic group life  
 9237 insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement  
 9238 System group insurance programs under the terms of and to the extent allowed by subsections B and D  
 9239 of the Act or any other provision of law.

9240 Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until  
 9241 that section is amended, the state retirement system, state health insurance program, and state workers'  
 9242 compensation coverage program as they may be amended from time to time, shall continue to apply to  
 9243 and govern all eligible University employees. If, however, the University has been or is permitted by  
 9244 law other than the Act to establish an alternative health insurance plan or an alternative faculty or  
 9245 Medical Center retirement plan or plans, such alternative health insurance or faculty or Medical Center  
 9246 retirement plan or plans shall apply to and govern the University employees included in such plan or  
 9247 plans. The University shall be responsible for managing its non-Medicare eligible retiree health  
 9248 insurance. Subject to the Act, the University may offer an alternative health insurance plan for  
 9249 Medicare-eligible retirees.

9250 The Systems may provide different benefits plans for reasonably different groups or classifications of  
 9251 employees, and may provide benefits to part-time employees. On the Effective Date of the University's  
 9252 initial Management Agreement with the Commonwealth, and until changed by the appropriate governing  
 9253 authority, the benefits plans provided by the University to Classified Employees and Participating  
 9254 Covered Employees shall be the benefits plans provided to that group or classification as of the date  
 9255 immediately prior to that Effective Date. On or after that Effective Date, alternative University group  
 9256 life, accidental death and dismemberment, and short- and long-term disability plans may be provided to  
 9257 eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the  
 9258 execution of participation agreements as provided in subsections B and C of § 23-38.119 of the Act,  
 9259 they may be provided by the appropriate State programs, but no contributions to the State programs by  
 9260 the University shall be required for Participating Covered Employees who do not participate in the  
 9261 programs. Subject to the provisions of the Act, any new plans, programs and material changes  
 9262 permitted under current law in University employee benefits plans, other than Classified Employee  
 9263 benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash  
 9264 Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources,  
 9265 and the authority to implement cafeteria-style benefits for University employees other than Classified  
 9266 Employees.

9267 Insurance and all proceeds therefrom provided pursuant to § 23-38.119 of the Act shall be exempt  
 9268 from legal process and may be subject to assignment as provided in subsection A of § 23-38.119.

9269 D. Employee Relations.

9270 General. The Systems shall contain provisions that protect the rights and privileges of University  
 9271 employees consistent with sound management principles and fair employment practice law.

9272 Employee Safety and Health. The Systems shall contain provisions that promote workplace safety  
 9273 compliance with applicable law and regulations.

9274 Employee Work Environment. The Systems shall promote a work environment that is conducive to  
 9275 the performance of job duties, and free from intimidation or coercion in violation of State or federal  
 9276 law, including sexual harassment or other discrimination.

9277 Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to  
 9278 policies and procedures for awarding, honoring, or otherwise recognizing University employees,  
 9279 including but not limited to those who have performed particularly meritorious service for the  
 9280 University, have been employed by the University for specified periods of time, or have retired from the  
 9281 University after lengthy service.

9282 Counseling Services. The Systems shall provide counseling services through the State's Employee  
 9283 Assistance Program or a University Employee Assistance Program to any eligible University employee  
 9284 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the

9285 *circumstances under which the time necessary to participate in such counseling may be granted.*  
9286 *Unemployment Compensation. The Systems shall ensure that University employees receive the full*  
9287 *unemployment compensation benefits to which they are legally entitled, and that the University's liability*  
9288 *is limited to legitimate claims for such benefits.*  
9289 *Workers' Compensation. The Systems shall ensure that University employees have workers'*  
9290 *compensation benefits to which they are legally entitled pursuant to the State Employees' Workers*  
9291 *Compensation Program administered by the Department of Human Resource Management.*  
9292 *8. Performance Planning and Evaluation. The Systems shall include one or more performance*  
9293 *planning and evaluation processes for University employees that (i) establish and communicate the*  
9294 *University's performance expectations, (ii) help develop productive working relationships, (iii) allow*  
9295 *employees to present their views concerning their performance, (iv) identify areas for training or*  
9296 *professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify*  
9297 *how superlative or inadequate performance shall be addressed, and (vii) ensure that all University*  
9298 *employees are provided relevant information on the evaluation process. The Systems may include*  
9299 *separate performance and evaluation processes for reasonably distinguishable groups of University*  
9300 *employees. On the Effective Date of the University's initial Management Agreement with the*  
9301 *Commonwealth, the existing merit-based performance management system for faculty and Medical*  
9302 *Center employees shall continue, until amended by the University. On or after that Effective Date,*  
9303 *Academic Division and College nonfaculty salaried Participating Covered Employees may be subject to*  
9304 *a variable merit-based performance management system.*  
9305 *9. Standards of Conduct and Performance. In order to protect the well-being and rights of all*  
9306 *employees and to ensure safe, efficient University operations and compliance with the law, the Systems*  
9307 *shall establish rules of personal conduct and standards of acceptable work performance for University*  
9308 *salaried nonfaculty employees and policies for corrective discipline. In general, the policies for*  
9309 *corrective discipline shall serve to (i) establish a uniform and objective process for correcting or*  
9310 *disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more*  
9311 *serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action*  
9312 *to employee conduct occurring only when employees are at work or are otherwise representing the*  
9313 *University in an official or work-related capacity, unless otherwise specifically provided by the policies*  
9314 *of the Systems or other applicable law. The Systems may provide for a probationary period for new*  
9315 *and re-employed University salaried nonfaculty employees, during which period the policies for*  
9316 *corrective discipline shall not be applicable and the employee may not use the grievance procedure set*  
9317 *forth in the next paragraph. The Systems may include separate rules of personal conduct and standards*  
9318 *of acceptable work performance and policies for corrective discipline for reasonably distinguishable*  
9319 *groups of University employees.*  
9320 *10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to*  
9321 *resolve employment-related problems and complaints informally, and shall be permitted to discuss their*  
9322 *concerns freely and without fear of retaliation with immediate supervisors and management. In the*  
9323 *event that such problems cannot be resolved informally, all salaried nonfaculty University employees,*  
9324 *regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in*  
9325 *§ 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of*  
9326 *the Code of Virginia, to the extent it was applicable to their classification of employees prior to the*  
9327 *Effective Date of the University's initial Management Agreement with the Commonwealth. On that*  
9328 *Effective Date, and until changed by the University, the faculty grievance procedures in effect*  
9329 *immediately prior to the Effective Date shall continue.*  
9330 *11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the*  
9331 *Classified Employee may file a complaint with the Department of Human Resource Management Office*  
9332 *of Equal Employment Services, with the appropriate University office, or with the appropriate federal*  
9333 *agencies. All Participating Covered Employees and applicants for employment after the Effective Date*  
9334 *of the University's initial Management Agreement with the Commonwealth shall file a complaint with the*  
9335 *appropriate University office or with the appropriate federal agencies.*  
9336 *12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University*  
9337 *employees who lose their jobs for reasons other than their job performance or conduct, such as a*  
9338 *reduction in force or reorganization at the University. These University layoff policies shall govern such*  
9339 *issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)*  
9340 *notice to employees affected by a layoff, (iv) placement options within the University or its respective*  
9341 *major divisions and within other parts of the University, (v) the preferential employment rights, if any,*  
9342 *of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for*  
9343 *recalling employees. In accordance with the terms of the Act, University employees who: (i) were*  
9344 *employed prior to the Effective Date of the University's initial Management Agreement with the*  
9345 *Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition*  
9346 *Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated*

9347 because of a reduction in force shall have the same preferential hiring rights with State agencies and  
 9348 other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of  
 9349 Virginia. Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 on  
 9350 State employees who were hired by a State agency or executive branch institution before the Effective  
 9351 Date of the University's initial Management Agreement with the Commonwealth and who were separated  
 9352 after that date by that State agency or executive branch institution because of a reduction in workforce.  
 9353 If the University has adopted a classification system pursuant to § 23-38.116 of the Act that differs from  
 9354 the classification system administered by the Department of Human Resource Management, the  
 9355 University shall classify the separated employee according to its classification system and shall place  
 9356 the separated employee appropriately. The University may include separate policies for reasonably  
 9357 distinguishable groups of University employees. On or after the Effective Date of the University's initial  
 9358 Management Agreement with the Commonwealth, all employees from other State agencies and executive  
 9359 branch institutions who are placed by the University under the provisions of the State Layoff Policy  
 9360 shall be Participating Covered Employees.

9361 13. *Severance Benefits.* In accordance with the terms of the Act, the University shall adopt  
 9362 severance policies for salaried Participating Covered Employees who are involuntarily separated for  
 9363 reasons unrelated to performance or conduct. The terms and conditions of such policies shall be  
 9364 determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were  
 9365 employed prior to the Effective Date of the University's initial Management Agreement with the  
 9366 Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of  
 9367 Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may  
 9368 negotiate a formula according to which cash severance benefits may be converted to years of age or  
 9369 creditable service for Participating Covered Employees who participate in the Virginia Retirement  
 9370 System. An employee becoming, on such Effective Date, a Covered Employee shall not constitute a  
 9371 severance or reduction in force to which severance or Workforce Transition Act policies apply.

9372 14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i)  
 9373 establish and maintain a work environment at the University that is free from the adverse effect of  
 9374 alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with  
 9375 the University of Virginia Alcohol and Other Drugs Policy, (iii) describe the range of authorized  
 9376 disciplinary action, including termination where appropriate, for violations of such policies and  
 9377 procedures, and the process to be followed in taking such disciplinary action, (iv) provide University  
 9378 employees access to assistance and treatment for problems involving alcohol and other drugs, (v)  
 9379 provide for the circumstances under which employees are required to report certain violations of the  
 9380 policies and procedures to their supervisor, and the University is required to report those violations to a  
 9381 federal contracting or granting agency, (vi) describe the circumstances under which personnel records  
 9382 of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and  
 9383 (vii) provide notice to University employees of the scope and content of the University alcohol and other  
 9384 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal  
 9385 Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment,  
 9386 reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing  
 9387 for University positions that are particularly safety sensitive, such as those requiring a Commercial  
 9388 Driver's License or the provision of patient care.

9389 15. *Background Checks.* The Systems shall include a process for conducting background checks,  
 9390 which may include but is not limited to reference checks, educational/ professional credentialing checks,  
 9391 and conviction and driver's records checks on applicants for full-time or part-time positions at the  
 9392 University, and for addressing situations where employees do not disclose a conviction on their  
 9393 application or otherwise falsify their application with regard to information concerning their  
 9394 education/professional credential and/or prior convictions.

9395 16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other  
 9396 reasonable employee relations policies or procedures that the President, acting through the Executive  
 9397 Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited  
 9398 to, policies or procedures relating to orientation programs for new or re-employed University  
 9399 employees, an employee suggestion program, the responsibility of University employees for property  
 9400 placed in their charge, work breaks, inclement weather and emergencies, and employment outside the  
 9401 University.

9402 E. *Leave and Release Time.*

9403 The Systems shall include policies and procedures regarding leave for eligible employees. The  
 9404 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal  
 9405 uses. The Systems may provide for release time for such matters as the donation of blood, participation  
 9406 in an employee assistance program and other appropriate employment-related matters. On or after the  
 9407 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is

9408 adopted by the appropriate authority, the University shall continue to provide leave and release time to  
 9409 Participating Covered Employees in accordance with the leave and release time policies and procedures  
 9410 applicable to each classification of employees prior to that Effective Date. On or after that Effective  
 9411 Date, the University may provide an alternative leave and release time system for salaried nonfaculty  
 9412 Participating Covered Employees.

9413 F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.

9414 1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and  
 9415 procedures to ensure that all aspects of human resources management, including the employment of  
 9416 University employees, meet all requirements of federal and state law, and of the relevant policies of the  
 9417 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

9418 Employment. The Systems shall include policies and procedures for the recruitment, selection and  
 9419 hiring of University employees that are based on merit and fitness, including where appropriate a  
 9420 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference  
 9421 checks and conviction record checks. On and after the Effective Date of its initial Management  
 9422 Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies  
 9423 through the University's job posting system, the Commonwealth's job posting system, and other external  
 9424 media as appropriate. The Systems shall establish designated veterans' re-employment rights in  
 9425 accordance with applicable law.

9426 In order to encourage employees to attain the highest level positions for which they are qualified,  
 9427 and to compensate employees for accepting positions of increased value and responsibility, the Systems  
 9428 shall include policies and procedures governing the promotion of employees, including the effect of  
 9429 promotion on an employee's compensation.

9430 On or after the Effective Date of the University's initial Management Agreement with the  
 9431 Commonwealth, all employees hired from other state agencies shall be Participating Covered  
 9432 Employees. University Academic Division and College Classified Employees who change jobs within the  
 9433 Academic Division or the College through a competitive employment process - i.e., promotion or  
 9434 transfer - shall have the choice of remaining a Classified Employee or becoming a Participating  
 9435 Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that  
 9436 decision shall be irrevocable.

9437 Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice,  
 9438 where appropriate, of a decision either by the employee or by the University to separate the employee  
 9439 from the University in accordance with policies governing performance, conduct, or layoff.

9440 G. Information Systems.

9441 The University shall provide an electronic file transfer of information on all salaried University  
 9442 employees and shall continue to provide the Employee Position Reports to meet the human resources  
 9443 reporting requirements specified by law or by request of the Governor or the General Assembly, unless  
 9444 the University is specifically exempted from those requirements. The University shall conduct  
 9445 assessments to demonstrate its accountability for human resources practices that comply with laws and  
 9446 regulations. The Department of Human Resource Management and the University have entered into a  
 9447 Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to  
 9448 time by agreement of the parties, regarding the specific data and reporting requirements. The  
 9449 University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the  
 9450 Department of Human Resources Management.

9451 VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA  
 9452 AND OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.

9453 On and after the Effective Date of its initial Management Agreement with the Commonwealth,  
 9454 University employees shall be subject to the terms and conditions of the Act and the Management  
 9455 Agreement between the Commonwealth and the University. Classified Employees shall continue to be  
 9456 subject to the human resources policies and exceptions to those policies adopted or approved by the  
 9457 Department of Human Resource Management.

9458 In addition, all University employees also shall remain subject to any other human resources policies  
 9459 adopted by the Board of Visitors applicable to University personnel unless University employees or a  
 9460 subset thereof are specifically exempted from those other human resources policies either by those other  
 9461 policies or by this Policy.

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### 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

9470 all parties, is an attachment to the Policy Governing Human Resources for Participating Covered  
9471 Employees and Other University Employees pursuant to the Restructured Higher Education Financial  
9472 and Administrative Operations Act of 2005, and is hereby entered into between the University of  
9473 Virginia and the Department of Human Resource Management (DHRM)..

9474 This document outlines the provisions for information management pertaining to human resources  
9475 data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting  
9476 requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so  
9477 through efficient and cost-effective methods.

9478 In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be  
9479 transmitted through an electronic file transfer to update DHRM's warehouse.

9480 The University will provide a flat file of designated personnel data. For "Classified Employees", the  
9481 data provided will match DHRM's data values for the designated fields. For salaried "Participating  
9482 Covered Employees", the data provided will include the University's data values for the designated  
9483 fields. The University will provide a data dictionary to DHRM. The file of designated data will be  
9484 specifically described by an addendum to this Memorandum upon the agreement of the University and  
9485 DHRM.

9486 The University will provide a second flat file of salaried personnel actions for "Classified  
9487 Employees" and salaried "Participating Covered Employees", such as promotions, separations, and  
9488 salary adjustments. The file of relevant personnel actions and designated data to be provided for each  
9489 action will be specifically described by an addendum to this Memorandum upon the agreement of the  
9490 University and DHRM.

9491 DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses  
9492 of employment and compensation actions that are part of the AAP, as demonstration of the University's  
9493 compliance with relevant federal and state employment laws and regulations.

9494 The University may key data into the Benefits Enrollment System or provide a batch file, or  
9495 employees may use Employee Direct (employee self service). For the self-administered health plans  
9496 provided by the University of Virginia Academic Division (agency 207) and Medical Center (agency  
9497 209), this section is not relevant.

9498 Other reports to be provided by the University include the following:

9499 Monthly Employee Position Report

9500 Annual report on salaried, wage, and contract employees

9501 The undersigned hereby agree to the provisions contained in the MOU.

9502 APPROVALS:

9503  
9504 The University of Virginia:

9505  
9506 By: \_\_\_\_\_ Date  
9507 Executive Vice President and Chief Operating Officer

9508  
9509  
9510 Department of Human Resources Management:

9511  
9512 By: \_\_\_\_\_ Date  
9513 Director, Department of Human Resources Management

9514  
9515 EXHIBIT R  
9516  
9517 MANAGEMENT AGREEMENT  
9518 BETWEEN  
9519 THE COMMONWEALTH OF VIRGINIA  
9520 AND  
9521 THE UNIVERSITY OF VIRGINIA  
9522 PURSUANT TO  
9523 THE RESTRUCTURED HIGHER EDUCATION  
9524 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
9525 ACT OF 2005  
9526  
9527  
9528 POLICY GOVERNING  
9529 FINANCIAL OPERATIONS AND MANAGEMENT  
9530

HOUSE  
SUBSTITUTE

SB675H1

**THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT**

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**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*

9593 *the duties and responsibilities set forth in this Policy to a person or persons within the University, who,*  
 9594 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
 9595 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*  
 9596 *and procedures.*

9597 **V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.**

9598 *The President, acting through the Executive Vice President and Chief Operating Officer, shall*  
 9599 *continue to be authorized by the Board to maintain existing and implement new policies governing the*  
 9600 *management of University financial resources. These policies shall continue to (i) ensure compliance*  
 9601 *with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting*  
 9602 *principles employed by the Commonwealth, including the use of fund accounting principles, with regard*  
 9603 *to the establishment of the underlying accounting records of the University and the allocation and*  
 9604 *utilization of resources within the accounting system, including the relevant guidance provided by the*  
 9605 *State Council of Higher Education for Virginia chart of accounts with regard to the allocation and*  
 9606 *proper use of funds from specific types of fund sources, (iii) provide adequate risk management and*  
 9607 *internal controls to protect and safeguard all financial resources, including moneys transferred to the*  
 9608 *University pursuant to a general fund appropriation, and ensure compliance with the requirements of*  
 9609 *the Appropriation Act.*

9610 *The financial management system shall continue to include a financial reporting system to satisfy*  
 9611 *both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,*  
 9612 *as specified in the related State Comptroller's Directives, and the University's separately audited*  
 9613 *financial statements. To ensure observance of limitations and restrictions placed on the use of the*  
 9614 *resources available to the University, the accounting and bookkeeping system of the University shall*  
 9615 *continue to be maintained in accordance with the principles prescribed for governmental organizations*  
 9616 *by the Governmental Accounting Standards Board.*

9617 *In addition, the financial management system shall continue to provide financial reporting for the*  
 9618 *President, acting through the Executive Vice President and Chief Operating Officer, and the Board of*  
 9619 *Visitors to enable them to provide adequate oversight of the financial operations of the University.*  
 9620 *Upon the Effective Date of the initial Management Agreement between the University and the*  
 9621 *Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in*  
 9622 *Section VII below, the University shall not be required to record its financial transactions in the*  
 9623 *Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing*  
 9624 *with CARS , or to record its financial transactions in any subsequent Commonwealth financial systems*  
 9625 *that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The*  
 9626 *University's financial reporting system shall provide (i) summary monthly reports for State agencies*  
 9627 *including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the*  
 9628 *Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the*  
 9629 *Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the*  
 9630 *Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a*  
 9631 *sufficient level of detail, on such schedule, and using such format that is compatible with the*  
 9632 *Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such*  
 9633 *other special reports as may be requested from time to time.*

9634 **VI. FINANCIAL MANAGEMENT POLICIES.**

9635 *The President, acting through the Executive Vice President and Chief Operating Officer, shall create*  
 9636 *and implement any and all financial management policies necessary to establish a financial management*  
 9637 *system with adequate risk management and internal control processes and procedures for the effective*  
 9638 *protection and management of all University financial resources. Such policies will not address the*  
 9639 *underlying accounting principles and policies employed by the Commonwealth and the University, but*  
 9640 *rather will focus on the internal operations of the University's financial management. These policies*  
 9641 *shall include, but need not be limited to, the development of a tailored set of finance and accounting*  
 9642 *practices that seek to support the University's specific business and administrative operating*  
 9643 *environment in order to improve the efficiency and effectiveness of its business and administrative*  
 9644 *functions. In general, the system of independent financial management policies shall be guided by the*  
 9645 *general principles contained in the Commonwealth's Accounting Policies and Procedures such as*  
 9646 *establishing strong risk management and internal accounting controls to ensure University financial*  
 9647 *resources are properly safeguarded and that appropriate stewardship of public funds is obtained*  
 9648 *through management's oversight of the effective and efficient use of such funds in the performance of*  
 9649 *University programs.*

9650 *Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University*  
 9651 *shall continue to follow the Commonwealth's accounting policies until such time as specific alternate*  
 9652 *policies can be developed, approved and implemented. Such alternate policies shall include applicable*  
 9653 *accountability measures and shall be submitted to the State Comptroller for review and comment before*

9654 *they are implemented by the University.*

9655 **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

9656 *Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the*  
 9657 *University shall have the power and authority to manage all monies received by it. All State general*  
 9658 *funds to be allocated to the University shall remain subject to the appropriations process.*

9659 *Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher*  
 9660 *Education for Virginia ("SCHEV") annually shall assess and certify to the Governor and General*  
 9661 *Assembly the degree to which each public institution of higher education of the Commonwealth has met*  
 9662 *the financial and administrative management and educational-related performance benchmarks called*  
 9663 *for by that subsection and approved as part of the Appropriation Act then in effect for the State goals*  
 9664 *and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to*  
 9665 *§ 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full*  
 9666 *fiscal year for which the financial and administrative management and educational-related performance*  
 9667 *benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for*  
 9668 *all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has*  
 9669 *been certified during the fiscal year by SCHEV as having met such institutional performance*  
 9670 *benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain*  
 9671 *financial incentives, including interest on the tuition and fees and other non-general fund Educational*  
 9672 *and General Revenues deposited into the State Treasury by the public institution of higher education.*

9673 *Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for*  
 9674 *which it has received such certification from SCHEV, the University is authorized to hold and invest*  
 9675 *tuition, Educational and General ("E&G") fees, research and sponsored program funds, auxiliary*  
 9676 *enterprise funds, and all other non-general fund revenues subject to the following requirements:*

9677 *i) The University shall deposit such funds in the State Treasury pursuant to the State process in*  
 9678 *place at the time of such deposit;*

9679 *ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section*  
 9680 *IX below;*

9681 *iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall*  
 9682 *hold in escrow all interest earned on the University's tuition and fees and other non-general fund*  
 9683 *Educational and General Revenues. Upon receipt of the required State Council of Higher Education for*  
 9684 *Virginia certification that the University has met such institutional performance benchmarks and the*  
 9685 *conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a*  
 9686 *non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year,*  
 9687 *equivalent to the amount deposited in the escrow account as the financial incentive provided in*  
 9688 *subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes related*  
 9689 *to its mission. If public institutions of higher education of the Commonwealth are permitted, or the*  
 9690 *University in particular is permitted, by the Appropriation Act or other law to retain or be paid the*  
 9691 *interest the Commonwealth would have earned on sponsored programs and research funds, then this*  
 9692 *paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*

9693 *iv) If in any given year the University does not receive the certification from the State Council of*  
 9694 *Higher Education for Virginia that it has met for that year the institutional benchmarks called for by*  
 9695 *subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall*  
 9696 *transfer to the general fund the balance in the escrow account as of June 30 of that year.*

9697 *v) Beginning on the effective date of its initial Management Agreement with the University until the*  
 9698 *beginning of the first fiscal year following the fiscal year for which it has received the required*  
 9699 *certification from SCHEV, the University shall continue to deposit tuition and all other non-general*  
 9700 *funds with the State Treasurer by the same process that it would have been required to use if it had not*  
 9701 *entered into a Management Agreement with the Commonwealth.*

9702 *vi) On the first business day of the first fiscal year following the fiscal year for which it has*  
 9703 *received the required certification from SCHEV, the University may draw down all cash balances held*  
 9704 *by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored*  
 9705 *programs, auxiliary enterprises, and all other non-general fund revenues.*

9706 *vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay*  
 9707 *these funds to the University as specified in Section IX below.*

9708 *The University also shall have sum sufficient appropriation authority for all non-general funds as*  
 9709 *approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations*  
 9710 *process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general*  
 9711 *fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of*  
 9712 *the two years in the next biennium by November 1 of each odd numbered year and the estimate to be*  
 9713 *included in the Budget Bill for the first and second year of the then-current biennium by November 1 of*  
 9714 *each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to*  
 9715 *the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

9716 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other  
 9717 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income  
 9718 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the  
 9719 intent of the Commonwealth and the University that the University shall be exempt from the revenue  
 9720 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,  
 9721 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the  
 9722 University that the University shall be entitled to retain non-general fund savings generated from  
 9723 changes in Commonwealth rates and charges, including but not limited to health, life, and disability  
 9724 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than  
 9725 reverting such savings back to the Commonwealth. This financial resource policy assists the University  
 9726 by providing the framework for retaining and managing non-general funds, for the receipt of general  
 9727 funds, and for the use and stewardship of all these funds.

9728 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
 9729 continue to provide oversight of the University's cash management system which is the framework for  
 9730 the retention of non-general funds. The Internal Audit Department of the University shall periodically  
 9731 audit the University's cash management system in accordance with appropriate risk assessment models  
 9732 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight  
 9733 shall continue to be provided through the annual audit and assessment of internal controls performed by  
 9734 the Auditor of Public Accounts.

9735 For the receipt of general and non-general funds, the University shall conform to the Security for  
 9736 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently  
 9737 exists and from time to time may be amended.

#### 9738 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

9739 The President, through the Executive Vice President and Chief Operating Officer, shall continue to  
 9740 be authorized to create and implement any and all Accounts Receivable Management and Collection  
 9741 policies as part of a system for the management of University financial resources. The policies shall be  
 9742 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the  
 9743 Code of Virginia such that the University shall take all appropriate and cost effective actions to  
 9744 aggressively collect accounts receivable in a timely manner.

9745 These shall include, but not be limited to, establishing the criteria for granting credit to University  
 9746 customers; establishing the nature and timing of collection procedures within the above general  
 9747 principles; and the independent authority to select and contract with collection agencies and, after  
 9748 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all  
 9749 collection activities for all University accounts receivable such as reporting delinquent accounts to  
 9750 credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In  
 9751 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's  
 9752 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and  
 9753 the State Comptroller to implement such Programs, and shall provide a quarterly summary report of  
 9754 receivables to the Department of Accounts in accordance with the reporting procedures established  
 9755 pursuant to the Virginia Debt Collection Act.

#### 9756 IX. DISBURSEMENT MANAGEMENT.

9757 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
 9758 continue to be authorized to create and implement any and all disbursement policies as part of a system  
 9759 for the management of University financial resources. The disbursement management policies shall  
 9760 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in  
 9761 the execution of the University's operations. These policies also shall continue to address the timing of  
 9762 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the  
 9763 appropriateness of certain goods or services relative to the University's mission, including travel-related  
 9764 disbursements. Further, the University's disbursement policy shall continue to provide for the  
 9765 mechanisms by which payments are made including the use of charge cards, warrants, and electronic  
 9766 payments. Since the University no longer will interface to the CARS system or any replacement for the  
 9767 CARS system for disbursements, the University shall establish its own mechanisms for electronic  
 9768 payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to  
 9769 the Commonwealth's Debt Set-Off Collection Programs.

9770 Beginning with the fiscal year after the first fiscal year for which it first receives the required  
 9771 certification from SCHEV, the University may draw down its general fund appropriations (subject to  
 9772 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.  
 9773 Such funds shall be available to the University for disbursement as provided in the then-current rules of  
 9774 the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in  
 9775 accordance with the following schedule:

9776 i) the University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation

9777 for Educational and General programs on the first and fifteenth days of each month, and up to 50  
9778 percent of its annual general fund appropriation for Student Financial Assistance on or after September  
9779 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order  
9780 to meet student obligations;

9781 ii) the University may draw down the sum of all tuition and E&G fees and all other non-general  
9782 revenues deposited to the State Treasury each day on the same business day they were deposited; and

9783 iii) the University anticipates that expenditures could exceed available revenues from time to time  
9784 during the year if the above disbursement schedule is used. When the University projects a cash deficit  
9785 is likely in activities supported by general fund appropriations, the University may make a request to the  
9786 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury,  
9787 in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

9788 These disbursement policies shall authorize the President, acting through the Executive Vice  
9789 President and Chief Operating Officer, to independently select, engage, and contract for such  
9790 consultants, accountants, and financial experts, and other such providers of expert advice and  
9791 consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may  
9792 be necessary or desirable in his or her discretion. The policies also shall continue to include the ability  
9793 to locally manage and administer the Commonwealth's credit card and cost recovery programs related  
9794 to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those  
9795 programs, provided that the University shall submit the credit card and cost recovery aspects of its  
9796 financial and operations policies to the State Comptroller for review and comment prior to implementing  
9797 those aspects of those policies. The disbursement policies shall ensure that adequate risk management  
9798 and internal control procedures shall be maintained over previously decentralized processes for public  
9799 records, payroll, and non-payroll disbursements. The University shall continue to provide summary  
9800 quarterly prompt payment reports to the Department of Accounts in accordance with the reporting  
9801 procedures established pursuant to the Prompt Payment Act.

9802 The University's disbursement policies shall be guided by the principles of the Commonwealth's  
9803 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the  
9804 Effective Date of its initial Management Agreement with the Commonwealth, the University shall  
9805 continue to follow the Commonwealth's disbursement policies until such time as specific alternative  
9806 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the  
9807 State Comptroller for review and comment prior to their implementation by the University.

#### 9808 X. DEBT MANAGEMENT.

9809 The President, acting through the Executive Vice President and Chief Operating Officer, shall  
9810 continue to be authorized to create and implement any and all debt management policies as part of a  
9811 system for the management of University financial resources.

9812 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,  
9813 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury  
9814 Board, and that are consistent with debt capacity and management policies and guidelines established  
9815 by its Board of Visitors, without obtaining the consent of any legislative body, elected official,  
9816 commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without  
9817 any proceedings or conditions other than those specifically required by Subchapter 3 of the Act;  
9818 provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds  
9819 pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any  
9820 new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for  
9821 review and comment prior to its adoption by the University.

9822 The University recognizes that there are numerous types of financing structures and funding sources  
9823 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by  
9824 the President, acting through the Executive Vice President and Chief Operating Officer, within the  
9825 context of the overall portfolio to ensure that any financial product or structure is consistent with the  
9826 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through  
9827 the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain  
9828 a full understanding of the transaction, including (i) the identification of potential risks and benefits,  
9829 and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or  
9830 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be  
9831 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

9832 The University currently has established guidelines relating to the total permissible amount of  
9833 outstanding debt by monitoring University-wide ratios that measure debt compared to University  
9834 balance-sheet resources and annual debt service burden. These measures are monitored and reviewed  
9835 regularly in light of the University's current strategic initiatives and expected debt requirements. The  
9836 Board of Visitors shall periodically review and approve the University's debt capacity and debt  
9837 management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of  
9838 Virginia for review and comment prior to their adoption by the University.

9839 **XI. INVESTMENT POLICY.**

9840 *It is the policy of the University to invest its operating and reserve funds solely in the interest of the*  
 9841 *University and in a manner that will provide the highest investment return with the maximum security*  
 9842 *while meeting daily cash flow demands and conforming to the Investment of Public Funds Act*  
 9843 *(§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence*  
 9844 *and diligence under the circumstances then prevailing that a prudent person acting in a like capacity*  
 9845 *and familiar with such matters would use in the conduct of an enterprise of a like character and with*  
 9846 *like aims.*

9847 *Endowment investments shall be invested and managed in accordance with the Uniform Management*  
 9848 *of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.*

9849 *The Board of Visitors shall periodically review and approve the investment guidelines governing the*  
 9850 *University's operating and reserve funds.*

9851 **XII. INSURANCE AND RISK MANAGEMENT.**

9852 *By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any*  
 9853 *intent during the next biennium to withdraw from any insurance or risk management program made*  
 9854 *available to the University through the Commonwealth's Division of Risk Management and in which the*  
 9855 *University is then participating, to enable the Commonwealth to complete an adverse selection analysis*  
 9856 *of any such decision and to determine the additional costs to the Commonwealth that would result from*  
 9857 *any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University*  
 9858 *proceeds to withdraw from the insurance or risk management program, the University shall reimburse*  
 9859 *the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the*  
 9860 *Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University*  
 9861 *and the Commonwealth.*

9862 **4. That the provisions of the first, second, and third enactments of this Act shall supersede the**  
 9863 **terms of any management agreement between the Commonwealth and Virginia Polytechnic**  
 9864 **Institute and State University, The College of William and Mary in Virginia, and The University**  
 9865 **of Virginia, respectively, that was entered into prior to January 1, 2006. Any such management**  
 9866 **agreement entered into prior to January 1, 2006, shall be deemed incorporated into this Act.**

9867 **5. That the provisions of the first, second, and third enactments of this Act shall expire at**  
 9868 **midnight on June 30, 2010. The expiration of such enactments shall automatically result in the**  
 9869 **expiration of the provisions of any management agreement between the Commonwealth and**  
 9870 **Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia,**  
 9871 **and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and**  
 9872 **incorporated into this Act.**