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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*

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

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

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

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

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

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

## 73 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

207        *SECTION 2.2. State Goals.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE 4. GENERAL PROVISIONS.

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

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

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

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

#### EXHIBIT A

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

#### POLICY GOVERNING CAPITAL PROJECTS

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

##### I. PREAMBLE.

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



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

## 435 II. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

## 466 III. SCOPE OF POLICY.

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

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

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

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

## 486 V. CAPITAL PROGRAM.

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



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

#### VI. AUTHORIZATION OF CAPITAL PROJECTS.

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

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

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

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

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

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

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

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

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

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

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

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

B. A prequalification procedure for contractors or products;

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

554 D. A prompt payment procedure.

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

558 VIII. DESIGN REVIEWS AND CODE APPROVALS.

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

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

590 IX. ENVIRONMENTAL IMPACT REPORTS.

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

598 X. BUILDING DEMOLITIONS.

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

607 XI. BUILDING OR LAND ACQUISITIONS.

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

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

A. Environmental and Land Use Considerations.

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

B. Infrastructure and Site Condition.

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

C. Title and Survey.

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

D. Appraisal.

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

XII. BUILDING OR LAND DISPOSITIONS.

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

XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

XIV. REPORTING REQUIREMENTS.

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

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

## EXHIBIT B

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

#### POLICY GOVERNING LEASES OF REAL PROPERTY

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

##### I. PREAMBLE.

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

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

##### II. DEFINITIONS.

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

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

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

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

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

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

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

another entity.

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

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

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

### III. SCOPE OF POLICY.

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

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

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

### V. REQUIREMENTS FOR LEASES.

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

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

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

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

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

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

#### D. Execution of Leases.

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

#### E. Capital Leases.

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

#### F. Compliance with Applicable Law.

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

#### G. Certification of Occupancy.

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

## EXHIBIT C

## MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA

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

POLICY GOVERNING  
INFORMATION TECHNOLOGY

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

I. PREAMBLE.

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

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

II. DEFINITIONS.

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

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

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

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

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

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

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

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

III. SCOPE OF POLICY.

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

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

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

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

#### IV. GENERAL PROVISIONS.

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

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

##### B. Strategic Planning.

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

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

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

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

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

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

##### D. Project Management.

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

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



921 revised from time to time.

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

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

930 The University shall be specifically exempt from:

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

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

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

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

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

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

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

953 F. Audits.

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

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

964  
965 EXHIBIT D

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

971 VIRGINIA POLYTECHNIC INSTITUTE  
972 AND STATE UNIVERSITY

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

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

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

**I. PREAMBLE.**

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

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

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

**II. DEFINITIONS.**

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

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

"Agreement" means "Management Agreement".

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

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

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

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

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

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

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

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

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

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

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

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

1047 **IV. GENERAL PROVISIONS.**

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

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

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

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

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

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

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

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

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

1083 Consistent with this commitment, the University:

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

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

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

1097 **E. Implementation.**

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

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

#### V. UNIVERSITY PROCUREMENT POLICIES.

##### A. General Competitive Principles.

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

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

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

##### B. Access to Records.

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

##### C. Cooperative Procurements and Alliances.

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

##### D. Training; Ethics in Contracting.

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

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

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

1171 E. Ethics and University Procurements.

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

1178 VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

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

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

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

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

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

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

1209 A. Protests, Appeals and Debarment.

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

1219 B. Prompt Payment of Contractors and Subcontractors.

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

1227 C. Types of Procurements.

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

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

*D. Approval and Public Notice of Procurements*

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

*E. Administration of Contracts.*

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

*F. Non-Discrimination.*

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

## ATTACHMENT I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



the contract.

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

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

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

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

3. Public opening and announcement of all bids received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1443 *§ 5. Methods of procurement. -*

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

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

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

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

- 1454 *1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*  
1455 *2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;*  
1456 *3. By the Institution for the construction of highways and any draining, dredging, excavation,*  
1457 *grading or similar work upon real property; or*

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

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

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

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

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

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

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

§ 6. Cooperative procurement. -

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

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

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

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

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

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

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

§ 8. Modification of the contract. -

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.

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

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

§ 14. Prequalification generally; prequalification for construction. -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 24. Contract Pricing Arrangements. -

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

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

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

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

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

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

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

§ 26. Retainage on construction contracts. -

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



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

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

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

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

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

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

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

1799 3. Provides for liquidated damages for delay; or

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

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

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

1813 § 28. Bid bonds. -

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

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

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

1823 § 29. Performance and payment bonds. -

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

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

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

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

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

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

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

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

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

1851 § 30. Alternative forms of security. -

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

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

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

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

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

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

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

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

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

1889 § 34. Public inspection of certain records. -

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

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

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

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

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

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

1913 § 35. Exemption for certain transactions. -

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

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

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

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

1925 4. The University of Virginia Medical Center.

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

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

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

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

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

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

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

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

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

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

1967 a particular religion.

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

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

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

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

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

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

1990 c. Private educational institutions; or

1991 d. Other public educational institutions.

1992 2. Speakers and performing artists;

1993 3. Memberships and Association dues;

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

1996 5. Group travel in foreign countries;

1997 6. Conference facilities and services;

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

2000 8. Royalties; or

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

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

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

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

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

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

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

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

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

2028 of § 26 relating to retainage shall remain valid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2070 § 46. Interest penalty; exceptions. -

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

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

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

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

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

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

§ 47. Ineligibility. -

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

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

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

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

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

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

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

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

§ 49. Determination of nonresponsibility. -

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

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

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

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

2151 as provided in § 54.

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

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

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

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

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

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

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

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

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

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

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



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

§ 53. Contractual disputes. -

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

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

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

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

§ 54. Legal actions. -

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

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

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

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

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

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

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

2276 § 55. Administrative appeals procedure. -

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

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

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

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

2300

2301

## ATTACHMENT 2

2302

### Memorandum of Agreement

2303

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

2304

ERP/SciQuest Implementation with eVA

2305

The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute

2306

and State University (University) agree to the following:

2307

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

2309

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

2314

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

2320

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

2323

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

2326

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

2330

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

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

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

The University further agrees that:

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

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

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

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

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

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

Guidelines

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

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

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

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

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

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

Schedule

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

Metrics

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

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

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

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

2. Conduct business with eVA registered vendors whenever possible;

- 2397 3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers  
2398 electronically using eVA;
- 2399 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar  
2400 value, that include commodity codes, complete item descriptions, quantities, and unit prices;
- 2401 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five  
2402 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and  
2403 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the  
2404 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to  
2405 monitor the usage of confirming orders with the objective of reducing their numbers to the extent  
2406 possible.
- 2407 The University agrees that, for confirming orders, it will resolve any vendor dispute, including  
2408 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such  
2409 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or  
2410 CGI-AMS.
- 2411 The University further agrees that:
- 2412 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the  
2413 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed  
2414 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);
- 2415 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)  
2416 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
- 2417 c. In the event the University does not provide resolution notification to the eVA Business Manager  
2418 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment  
2419 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
- 2420 6. Timely process electronic change orders and cancellations;
- 2421 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA web site except  
2422 as specifically exempted by DPS;
- 2423 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to  
2424 end users using the ERP/SciQuest Integration system. The University will be responsible for the  
2425 accuracy of contract catalog pricing loaded into the ERP/SciQuest.
- 2426 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post  
2427 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10  
2428 below);
- 2429 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate  
2430 commodities, when such are identified.
- 2431 11. Complete and certify the monthly eVA Dashboard Report, and
- 2432 12. Timely remit any eVA transaction and non-use fees incurred by the institution.
- 2433 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
- 2434 D. The University shall assure that payments to CGI-AMS are current.

2435  
2436 EXHIBIT E

2437  
2438 MANAGEMENT AGREEMENT  
2439 BETWEEN  
2440 THE COMMONWEALTH OF VIRGINIA  
2441 AND

2442 VIRGINIA POLYTECHNIC INSTITUTE  
2443 AND STATE UNIVERSITY

2444 PURSUANT TO  
2445 THE RESTRUCTURED HIGHER EDUCATION  
2446 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
2447 ACT OF 2005  
2448

2449  
2450 POLICY GOVERNING  
2451 HUMAN RESOURCES FOR  
2452 PARTICIPATING COVERED EMPLOYEES  
2453 AND OTHER UNIVERSITY EMPLOYEES  
2454

2455  
2456 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
2457 AND STATE UNIVERSITY  
2458 POLICY GOVERNING HUMAN RESOURCES FOR

**PARTICIPATING COVERED EMPLOYEES  
AND OTHER UNIVERSITY EMPLOYEES**

**I. PREAMBLE.**

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

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

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

**II. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2525 "University employee" means a Covered Employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *VI. HUMAN RESOURCES POLICIES.*

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

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

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

*B. Classification and Compensation.*

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



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

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

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

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

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

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

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

2686 C. Benefits.

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

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

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

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

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

D. Employee Relations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### E. Leave and Release Time.

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

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

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

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

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

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

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

2895 G. Information Systems.

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

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

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

2916

2917

ATTACHMENT 3

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2919

Memorandum of Understanding

2920

Between Virginia Polytechnic Institute and State University and the

2921

Department of Human Resources Management Regarding

2922

The Reporting of Human Resources Management Data

2923

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

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

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

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

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

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

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

2950 4. Other reports to be provided by the University include the following:

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

## APPROVALS:

Virginia Polytechnic Institute and State University:

By:  
*Executive Vice President & Chief Operating Officer*

Date\_\_\_\_\_

Department of Human Resources Management:

By:  
*Director, Department of Human Resource Management*

Date

## EXHIBIT F

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

POLICY GOVERNING  
 FINANCIAL OPERATIONS AND MANAGEMENT

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

## I. PREAMBLE.

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

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

## II. DEFINITIONS.

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

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

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

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

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

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*



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

#### VI. FINANCIAL MANAGEMENT POLICIES.

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

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

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

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

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

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

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

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

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

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

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

#### IX. DISBURSEMENT MANAGEMENT.

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

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

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

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

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

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

#### X. DEBT MANAGEMENT.

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

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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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.

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

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

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

RECITALS

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

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

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

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

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

AGREEMENT

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

ARTICLE 1. DEFINITIONS.

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

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

"Agreement" means "Management Agreement."

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

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

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

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

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

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

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

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

ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

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

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 policies 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*

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

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

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

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

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

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

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



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.

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

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

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

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

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

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

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

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

**SECTION 2.4.4. Educational Policies of the Commonwealth.** As provided in subsection A of § 23-38.93 of the Act, for purposes of §§ 2.2-5004, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.2:1, 23-3, 23-4.2, 23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2, 23-9.2:3, 23-9.2:3.02, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, and Chapter 4.9 (§ 23-38.75 et seq.) of the Code of Virginia, the College shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the

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

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

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

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

## EXHIBIT G

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

#### POLICY GOVERNING CAPITAL PROJECTS

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

##### I. PREAMBLE.

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

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

##### II. DEFINITIONS.

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

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

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

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

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

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

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

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*

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

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

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

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

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

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

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

Making procurement rules clear in advance of any competition;

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

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

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

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

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

A prequalification procedure for contractors or products;

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

A prompt payment procedure.

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

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

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

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

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.



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

#### D. Appraisal.

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

### XII. BUILDING OR LAND DISPOSITIONS.

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

### XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

### XIV. REPORTING REQUIREMENTS.

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

## EXHIBIT H

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

### POLICY GOVERNING LEASES OF REAL PROPERTY

### THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

**POLICY GOVERNING LEASES OF REAL PROPERTY****I. PREAMBLE.**

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

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

**II. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

**III. SCOPE OF POLICY.**

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

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

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

**V. REQUIREMENTS FOR LEASES.****A. Factors to Be Considered When Entering into Leases.**

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

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

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

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

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

*D. Execution of Leases.*

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

*E. Capital Leases.*

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

*F. Compliance with Applicable Law.*

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

*G. Certification of Occupancy.*

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

**EXHIBIT I**

**MANAGEMENT AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
THE COLLEGE OF WILLIAM & MARY IN VIRGINIA**

**PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
OF 2005**

**POLICY GOVERNING  
INFORMATION TECHNOLOGY**

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

**I. PREAMBLE.**

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

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

**II. DEFINITIONS.**

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

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

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

*"College" means the College of William & Mary in Virginia, State Agency 204, and the Virginia*

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*

requests) as it currently exists and from time to time may be amended;

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

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

#### D. Project Management.

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

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

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

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

The College shall be specifically exempt from:

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

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

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

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

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

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

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

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

#### F. Audits.

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

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

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

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

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

I. PREAMBLE.

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

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

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

II. DEFINITIONS.

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

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

"Agreement" means "Management Agreement".

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

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

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

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

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

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

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

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

"Services" as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of

equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.

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

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

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

### IV. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

Consistent with this commitment, the College:

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

ii) shall use directly or by integration or interface the Commonwealth's electronic procurement system; and

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

#### E. Implementation.



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

(i) that all College officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.

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

#### E. Ethics and College Procurements.

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

#### VI. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.

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

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

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

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

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

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

##### A. Protests, Appeals and Debarment.

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

##### B. Prompt Payment of Contractors and Subcontractors.

The Rules and College implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The

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

is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

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

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

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

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

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

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

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

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

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

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,

at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

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

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

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

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

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

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

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

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

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

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

§ 5. Methods of procurement. -

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

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

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

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

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

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

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

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

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



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

§ 8. Modification of the contract. -

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

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

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

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

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

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

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

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

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

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

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The Institution shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be

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

to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.

§ 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. Cancellation, rejection of bids; waiver of informalities. -

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.

§ 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.

§ 19. Purchase programs for recycled goods; Institution responsibilities. -

A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.

§ 20. Preference for Virginia products with recycled content and for Virginia firms. -

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

§ 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

§ 22. Preference for recycled paper and paper products used by the Institution. -

A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than ten percent greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

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*

has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

§ 26. Retainage on construction contracts. -

A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -

A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.

§ 28. Bid bonds. -

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1,000,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1,000,000.

§ 29. Performance and payment bonds. -

A. Upon the award by the Institution of any (i) public construction contract exceeding \$1,000,000 awarded to any prime contractor or (ii) public construction contract exceeding \$1,000,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

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.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

§ 35. Exemption for certain transactions. -

A. The provisions of these Rules shall not apply to:

1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.

4. The University of Virginia Medical Center.

5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.

§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.

E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,



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*

to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

§ 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

§ 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.

§ 42. Prompt payment of bills by the Institution. -

A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.

Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

§ 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services.

§ 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

§ 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract; or

b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions. -

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a

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*

business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award. -

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution ("ADR") shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the

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

Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure. -

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution ("ADR") procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

§ 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting. - The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

#### EXHIBIT K

#### MANAGEMENT AGREEMENT BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE COLLEGE OF WILLIAM & MARY IN VIRGINIA

AND

THE VIRGINIA INSTITUTE OF MARINE SCIENCE

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
OF 2005

#### POLICY GOVERNING HUMAN RESOURCES FOR PARTICIPATING COVERED EMPLOYEES AND OTHER COLLEGE EMPLOYEES

THE RECTOR AND VISITORS OF  
THE COLLEGE OF WILLIAM & MARY IN VIRGINIA  
POLICY GOVERNING HUMAN RESOURCES FOR  
PARTICIPATING COVERED EMPLOYEES  
AND OTHER COLLEGE EMPLOYEES

#### I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of

higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the College of William & Mary in Virginia shall have responsibility and accountability for human resources management for all College employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § 23-38.114 of the Act "are state employees of" the College. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or College-sponsored benefit plans as described by the Management Agreement.

The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the College for its employees.

This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.

## II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William & Mary and the Virginia Institute of Marine Science.

"Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.

"College" means the College of William and Mary in Virginia, formerly known as agency 204 and the Virginia Institute of Marine Science, formerly known as agency 268.

"College employee" means a Covered Employee.

"College Human Resources System" means the human resources system for College employees as provided for herein.

"Covered Employee" means any person who is employed by the College on either a salaried or non-salaried (wage) basis.

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Employee" means Covered Employee unless the context clearly indicates otherwise.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the College.

"Effective Date" means the effective date of the initial Management Agreement between the College and the Commonwealth.

"Governing Law" means the Act and the College's Enabling Legislation.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the College and the Commonwealth.

"Participating Covered Employee" means (i) all salaried nonfaculty College employees who were employed as of the day prior to the Effective Date of the College's initial Management Agreement with the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by the College, (ii) all salaried nonfaculty College employees who are employed by the College on or after the Effective Date of the initial Management Agreement between the College and the Commonwealth, (iii) all non-salaried nonfaculty College employees without regard to when they were hired, (iv) all faculty College employees without regard to when they were hired.



"Systems" means collectively the College Human Resources System that is in effect from time to time.

### III. SCOPE AND PURPOSE OF COLLEGE HUMAN RESOURCES POLICIES.

The College has had human resources system autonomy through decentralization for its employees for some time. For example, general faculty at the College are expressly exempt from the Virginia Personnel Act. The College has had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices.

The Act extends and reinforces the human resources autonomy previously granted to the College. This Policy therefore is adopted by the Board of Visitors to enable the College to develop, adopt, and have in place by or after the Effective Date of its initial Management Agreement with the Commonwealth, a human resources system or systems for all College employees. On that Effective Date, and until changed by the College or unless otherwise specified in this Policy, the systems for College employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.

### IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.

### V. COLLEGE OF WILLIAM & MARY HUMAN RESOURCES SYSTEMS.

#### A. Adoption and Implementation of College Human Resources Systems.

The President is hereby authorized to adopt and implement human resources systems for employees of the College that are consistent with the Governing Law, other applicable provisions of law, these College human resources policies for College employees, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for College personnel, unless College employees are exempted from those other human resources policies by law or policy. The College Human Resources Systems shall include a delegation of personnel authority to appropriate College officials responsible for overseeing and implementing the College Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.

The College commits to regularly engage employees in appropriate discussions and to receive employee input as the new College Human Resources Systems are developed. The College will regularly communicate the details of new proposals to all employees who are eligible to participate in the College Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.

Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and until amended as described below, the College's human resources systems shall consist of the following:

1. the current "College of William and Mary Faculty Handbook," as it is posted on the Provost's website, <http://www.wm.edu/provost/index.php>, and periodically amended; and

2. the current human resources system for Classified Employees in the College as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>; and

3. the human resources system for Participating Covered Employees, which shall include non-salaried (wage) employees, as posted on the College Human Resources web site, <http://www.wm.edu/hr.html> and periodically amended.

All the systems describe above, except the system described in paragraph 3, may be amended by the President, consistent with these human resources policies. The system described in paragraph 3 may be amended only by the State.

#### B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.

The President, or designee, shall take all necessary and reasonable steps to assure (i) that the College officials who develop, implement and administer the College Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these College human resources policies, and other applicable Board of Visitors' human resources policies affecting College employees, and (ii) that compliance with such laws and human resources policies is achieved.

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*

that Effective Date. The College may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. Any major change in compensation plans for Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to College employees shall be authorized and approved only by designated College officers delegated such authority by the College, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.

Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.

Payment of Compensation. The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.

Work Schedule and Workweek. The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all College employees, including alternative work schedules and sites, and telecommuting policies and procedures.

Other Classification and Compensation Policies and Procedures. The Systems may include any other reasonable classification and compensation policies and procedures the President deems appropriate.

#### C. Benefits.

The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in §23-38.119.B and C of the Act, the College may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by §23-38.119B and D of the Act or any other provision of law.

Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible College employees.

The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the College to Classified Employees and Participating Covered Employees shall be the benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative College group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of §23-38.119 of the Act, they may be provided by the appropriate State programs, but no contributions to the state programs by the College shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in College employee benefit plans, other than Classified Employee benefit plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for College employees other than Classified Employees.

Insurance and all proceeds therefrom provided pursuant to §23-38.119 of the Act shall be exempt from legal process and may be subject to voluntary assignment as provided in subsection A of §23-38.119.

#### D. Employee Relations.

General. The Systems shall contain provisions that protect the rights and privileges of College

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

complaint with the appropriate College office or with the appropriate federal agencies.

12. *Layoff Policy.* The Systems shall include one or more layoff policies for salaried College employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the College. These College layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the College or its respective major divisions and within other parts of the College, (v) the preferential employment rights, if any, of various College employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, College employees who: (i) were employed prior to the Effective Date of the College's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of Virginia. Conversely, the College shall recognize the hiring preference conferred by § 2.2-3201 on State employees who were hired by a State agency or executive branch institution before the Effective Date of the College's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the College has adopted a classification system pursuant to § 23-38.116 of the Act that differs from the classification system administered by the Department of Human Resource Management, the College shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The College may include separate policies for reasonably distinguishable groups of College employees. On or after the Effective Date of the College's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the College under the provisions of the State Layoff Policy shall be Participating Covered Employees.

13. *Severance Benefits.* In accordance with the terms of the Act, the College shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the College's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of Virginia. The College and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee's becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies would apply.

14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i) establish and maintain a work environment at the College that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the College of William & Mary Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide College employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the College is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the College's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to College employees of the scope and content of the College alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for College positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License.

15. *Background Checks.* The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/ professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the College, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.

16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other

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

thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.

## ATTACHMENT 2

### Memorandum of Understanding Between the The College of William and Mary and the Department of Human Resources Management Regarding The Reporting of Human Resources Management Data

This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other College Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between the College of William and Mary and the Department of Human Resource Management (DHRM).

I. This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods.

1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.

a. The College will provide a flat file of designated personnel data. For "Classified Employees", the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees", the data provided will include the University's data values for the designated fields. The College will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

b. The College will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees", such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the College's compliance with relevant federal and state employment laws and regulations.

3. The College may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self service).

4. Other reports to be provided by the College include the following:

a. Monthly Employment Position Report

b. Annual report on salaried, wage, and contract employees

The undersigned hereby agree to the provisions contained in the MOU.

APPROVALS:

The College of William and Mary:

By:  
Vice President for Administration

Date

Department of Human Resources Management:

By:  
Director, Department of Human Resources Management

Date

## EXHIBIT L

### MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COLLEGE OF WILLIAM AND MARY PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION

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

the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.

#### V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, or designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of College financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the College and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the College pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.

The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the College's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the College, the accounting and bookkeeping system of the College shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.

In addition, the financial management system shall continue to provide financial reporting for the President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the College. Upon the Effective Date of the initial Management Agreement between the College and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the College shall not be required to record its financial transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing with CARS, or be a part of any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The College's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

#### VI. FINANCIAL MANAGEMENT POLICIES.

The President, or designee, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all College financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the College, but rather will focus on the internal operations of the College's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the College's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure College financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of College programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the College.

#### VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the

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 sponsored programs 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

intent of the Commonwealth and the College that the College shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the College that the College shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the College by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.

The President, or designee, shall continue to provide oversight of the College's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the College shall periodically audit the College's cash management system in accordance with appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.

For the receipt of general and non-general funds, the College shall conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.

#### VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

The President, or designee, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of College financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia such that the College shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

These shall include, but not be limited to, establishing the criteria for granting credit to College customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all College accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the College shall continue to utilize the Commonwealth's Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.

#### IX. DISBURSEMENT MANAGEMENT.

The President, or designee, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of College financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the College's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's mission, including travel-related disbursements. Further, the College's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the College no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the College shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to the Commonwealth's Debt Set Off Collection Programs.

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the College may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the College for disbursement as provided in the then-current rules of the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in accordance with the following schedule:

i) the College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50 percent of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;

ii) the College may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and

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

of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

The Board of Visitors shall periodically review and approve the investment guidelines governing the College's operating and reserve funds.

## **XII. INSURANCE AND RISK MANAGEMENT.**

By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the College through the Commonwealth's Division of Risk Management and in which the College is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College proceeds to withdraw from the insurance or risk management program, the College shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and the Commonwealth.

**3. That the following Chapter 3 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and The University of Virginia":**

### **CHAPTER 3.**

#### **MANAGEMENT AGREEMENT BY AND BETWEEN THE COMMONWEALTH OF VIRGINIA AND**

#### **THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA**

This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the "Commonwealth") and the Rector and Visitors of the University of Virginia (hereafter, "the University") provides as follows:

#### **RECITALS**

WHEREAS the University has satisfied the conditions precedent set forth in subsections A and B of § 23-38.97 of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ 23-38.91 et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia ("Subchapter 3" and the "Act," respectively), as evidenced by:

1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the University held on June 10, 2005, and the accompanying certification of the Secretary of the Board, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subsection A 1 of § 23-38.97 of the Act;

2. Written Application to the Governor. The University has submitted to the Governor a written Application, dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the University is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the University has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and

3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act, the Governor has found that the University has fulfilled the requirements of subsection A 2 of § 23-38.97, and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the University; and

WHEREAS, the University is therefore authorized to enter into this Management Agreement as provided in subsection D of § 23-38.88 and Subchapter 3 of the Act.

#### **AGREEMENT**

NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the University do

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



(Exhibit R), including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits M through R, the Commonwealth and the University agree that the Commonwealth has expressly granted to the University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits M through R. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits M through R, to a person or persons within the University.

**SECTION 2.1.3. Reimbursement by the University of Certain Costs.** By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group insurance or risk management program made available to the University through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the University is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from such health or other group insurance or risk management program, the University shall, pursuant to subdivision D 2 c of § 23-38.88, reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.

**SECTION 2.1.4. Potential Impact on Virginia College Savings Plan.** As required by subsection D (2) (c) of § 23-38.88 of the Act, the University has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to the University and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.

**SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act.** Pursuant to § 23-38.110 of the Act and subject to the provisions of this Management Agreement, the University may be exempt from the provisions of the Virginia Public Procurement Act ("VPPA"), Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the "Procurement Rules") attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § 23-38.110 of the Act.

Subsection D of § 23-38.110 of the Act requires that the University identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide the University with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position the University to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the University to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the University's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the University and public sector suppliers.

**SECTION 2.1.6. Quantification of Cost Savings.** Subsection C of § 23-38.104 of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the

quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the University, the parties agree that the University is not in a position to quantify any such cost savings at this time, although the University expects that there will be cost savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.

**SECTION 2.1.7. Participation in State Programs.** The Commonwealth intends that the University shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq. of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.

As a teaching hospital that is a part of the University as of the Effective Date, the Medical Center shall continue to be characterized as a state government-owned or operated and state-owned teaching hospital for purposes of payments under the State Plan for Medicaid Services adopted pursuant to § 32.1-325 et seq. The University has committed to serve indigent and medically indigent patients through its adoption of the Guidelines for the Eligibility of Indigent and Medically Indigent Persons for Health Care Services at the State University Teaching Hospitals. Pursuant to subsection B of § 23-38.93 of the Act, the Commonwealth, through the Department of Medical Assistance Services, shall, subject to the appropriation in the Appropriation Act in effect, continue to reimburse the full cost of the provision of care, treatment, health-related and educational services to indigent and medically indigent patients and continue to treat the Medical Center as a Type One Hospital for purposes of such reimbursement.

**SECTION 2.1.8. Implied Authority.** Pursuant to subsection D 1 of § 23-38.88 of the Act, the only implied authority granted to the University by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as Exhibits M through R.

**SECTION 2.1.9. Exercise of Authority.** The University and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the University the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the University shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits M through R, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R.

The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of the University shall assume full responsibility for management of the University, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of the University as provided in the Act, (b) meeting the requirements of §§ 2.2-5004, 23-9.2:3.02, and 23-9.6:1.01 of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.

**SECTION 2.2. State Goals.**

**SECTION 2.2.1. Furthering State Goals.** As required for all public institutions of higher education of the Commonwealth by subsection B of § 23-38.88, prior to August 1, 2005, the Board of Visitors of the University adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B. In addition to the above commitments, the University commits to furthering these State goals by:

1. In addition to its six-year target of achieving \$337 million in external research by 2011-12, the University commits to match from institutional funds, other than general funds or tuition, on a dollar for

dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.

2. In a concerted effort to provide educational opportunities to Virginia students attending institutions in the Virginia Community College System ("VCCS") and Richard Bland College, the University commits to work with Virginia Polytechnic Institute and State University ("Virginia Tech") and the College of William and Mary in Virginia to establish a program under which these three institutions will increase significantly the number of such students transferring to their institutions. Specifically, pursuant to this program, the University, Virginia Tech and the College of William and Mary in Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 1,250 such transfer students each year. The three institutions have agreed that they will mutually determine how to divide the responsibility for these additional transfer students equitably among themselves.

3. As an institutional priority and obligation, the University commits to the Governor and General Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in education, income, employment, and other factors. The University commits to establish a formal partnership with that area to develop jointly a specific action plan that builds on the University's programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise to stimulate economic development in the area to make the area more economically viable, and to improve student achievement and teacher and administrator skill sets in a school division in that area. The University shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.

SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the Code of Virginia, the University, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia ("SCHEV") by October 1, 2005, an institution-specific Six-Year Plan addressing the University's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § 23-9.2:3.02 requires the University to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement address, among other issues, such matters as the University's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in the University's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the University's Six-Year Plan and the description below meet the requirement of subsection B of § 23-38.97 of the Act.

Subsection B of § 23-38.104 of the Act requires the Board of Visitors of the University to include in this Management Agreement the University's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. The University's commitment in this regard is clear.

The Academic Division will continue to offer enrollment to in-state undergraduate students without regard to ability to pay and shall continue implementation of AccessUVa, a financial aid program designed to keep higher education affordable for all undergraduate students, including Virginians and non-Virginians, who qualify for admission, regardless of economic circumstance. In the fall 2005 AccessUVa was modified to provide expanded benefits for qualifying Virginia Community College System transfer students. The program shall be substantially as described in the remainder of this Section 2.2.2, as may be amended from time to time by the Board of Visitors of the University and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations.

The Academic Division currently offers financial aid packages to meet 100 percent of demonstrated need to all qualified undergraduate students. This goal was met in 2004-05.

The Academic Division will eliminate all need-based loans, replacing them with grants, in the financial-aid packages of low-income undergraduate students, beginning with the fall 2004 entering class. At this time low-income is defined as families with an income equivalent to 200 percent of the federal poverty line or less. This phase will be fully implemented by fall 2007. The University's goals for this component of the program include:

1. Increase enrollment by low-income students.
2. Improve the socio-economic diversity at the University.

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

§ 23-38.112 of the Act regarding § 23-77.1.

**SECTION 2.4.3. Title 2.2 of the Code of Virginia.** As provided in subsection B of § 23-38.92 of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to the University as provided by the express terms of this Management Agreement. As further provided in subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.

**SECTION 2.4.4. Educational Policies of the Commonwealth.** As provided in subsection A of § 23-38.93 of the Act, for purposes of §§ 2.2-5004, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 23-4.2, 23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2, 23-9.2:3, 23-9.2:3.02, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, and Chapter 4.9 (§ 23-38.75 et seq.) of the Code of Virginia, the University shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, the University shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.), Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.), Chapter 4.4 (§ 23-38.45 et seq.), Chapter 4.4:1 (§ 23-38.53:1 et seq.), Chapter 4.4:2 (§ 23-38.53:4 et seq.), Chapter 4.4:3 (§ 23-38.53:11), Chapter 4.4:4 (§ 23-38.53:12 et seq.), Chapter 4.5 (§ 23-38.54 et seq.), Chapter 4.7 (§ 23-38.70 et seq.), Chapter 4.8 (§ 23-38.72 et seq.), and Chapter 4.9 (§ 23-38.75 et seq.), unless and until provided otherwise by law other than the Act.

**SECTION 2.4.5. Public Access to Information.** As provided in § 23-38.95 of the Act, the University shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct business pursuant to § 2.2-3709 and, in all cases, may conduct business as a "state public body" for purposes of subsection B of § 2.2-3708.

**SECTION 2.4.6. Conflicts of Interests.** As provided in § 23-38.96 of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the University and to its Covered Employees.

**SECTION 2.4.7. Other Provisions of the Code of Virginia.** Other than as specified above, any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits M through R.

### **ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.**

**SECTION 3.1. Amendments.** Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to subsection D 4 of § 23-38.88 of the Act.

**SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.**

**SECTION 3.2.1. Governor.** Pursuant to subsection D 4 of § 23-38.88, and § 23-38.98, of the Act, if the Governor makes a written determination that the University is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the University and to the members of the General Assembly, and (ii) the University shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the University, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this

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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6851

#### EXHIBIT M

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#### MANAGEMENT AGREEMENT

6854

#### BETWEEN

6855

#### THE COMMONWEALTH OF VIRGINIA

6856

#### AND

6857

#### THE UNIVERSITY OF VIRGINIA

6858

#### PURSUANT TO

6859

#### THE RESTRUCTURED HIGHER EDUCATION

6860

#### FINANCIAL AND ADMINISTRATIVE OPERATIONS

6861

#### ACT OF 2005

6862

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#### POLICY GOVERNING CAPITAL PROJECTS

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#### THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

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#### POLICY GOVERNING CAPITAL PROJECTS

6869

#### I. PREAMBLE.

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6871 *Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389,*  
6872 *respectively) delegated limited but significant autonomy to the University of Virginia to establish its own*  
6873 *post-appropriation system for undertaking the implementation of non-general fund capital projects for*  
6874 *the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act delegated*  
6875 *nearly identical limited autonomy to the University as a whole for non-general fund capital projects.*  
6876 *Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of*  
6877 *Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the "Existing Policy*  
6878 *Statement").*

6879 *The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter*  
6880 *4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the*  
6881 *University may be delegated the authority to establish its own system for undertaking the implementation*  
6882 *of its capital projects. In general, status as a Covered Institution is designed to replace the*  
6883 *post-authorization system of reviews, approvals, policies and procedures carried out by a variety of*  
6884 *central State agencies, and also the traditional pre-authorization approval process for projects funded*  
6885 *entirely with non-general funds and without any proceeds from State Tax Supported Debt. The*  
6886 *University's system for carrying out its capital outlay process as a Covered Institution is to be governed*  
*by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the*

Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

## II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as State Agency 207.

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the University of Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

"Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as State Agency 246.

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.

"Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.

"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

## III. SCOPE OF POLICY.

This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.

This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.

## IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the



proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.

#### V. CAPITAL PROGRAM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.

It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.

#### VI. AUTHORIZATION OF CAPITAL PROJECTS

The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.

It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, for all other capital projects. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement.

Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through the Executive Vice President and Chief Operating Officer, to be justified.

Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.

#### VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.

It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to:

Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;

Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;

Making procurement rules clear in advance of any competition;

Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;

Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other

basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations;

Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for:

A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

A prequalification procedure for contractors or products;

A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and

A prompt payment procedure.

The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, the purposes of this Policy will be furthered.

#### VIII. DESIGN REVIEWS AND CODE APPROVALS.

The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code ("VUSBC") standards and the applicable accessibility code.

The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the University on the same capital project.

#### IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of \$300,000 or more.

#### X. BUILDING DEMOLITIONS.

It shall be the policy of the University to consider the environmental and historical aspects of any

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*

President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.

The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.

The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction.

#### XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

#### EXHIBIT N

### MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

#### POLICY GOVERNING LEASES OF REAL PROPERTY

#### THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING LEASES OF REAL PROPERTY

##### I. PREAMBLE.

In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the University, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University of Virginia may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

##### II. DEFINITIONS.

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.

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the University shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the University under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

**EXHIBIT O**

**MANAGEMENT AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
THE UNIVERSITY OF VIRGINIA  
PURSUANT TO**

**THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
OF 2005**

**POLICY GOVERNING  
INFORMATION TECHNOLOGY**

**THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING INFORMATION TECHNOLOGY**

**I. PREAMBLE.**

*The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between the Commonwealth and the University that incorporates this Policy.*

*The Board of Visitors of the University of Virginia is authorized to adopt this Information Technology Policy pursuant to § 23-38.111 of the Code of Virginia.*

**II. DEFINITIONS.**

*As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:*

*"Academic Division" means that part of the University known as State Agency 207.*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.*

*"College" means that part of the University operated as the University of Virginia's College at Wise, also known as State Agency 246.*

*"Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.*

*"Major information technology project" or "major IT project" shall have the same meaning as set forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.*

*"Medical Center" means that part of the University consisting of the University of Virginia Medical Center, known as State Agency 209, and related health care and health maintenance facilities.*

*"Policy" means this Information Technology Policy adopted by the Board of Visitors.*

*"State Chief Information Officer" or "State CIO" means the Chief Information Officer of the*

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:*



Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget requests) as it currently exists and from time to time may be amended;

§§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund) as they currently exist and from time to time may be amended; and

any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.

#### *D. Project Management.*

Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.

The President, acting through the Executive Vice President and Chief Operating Officer, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.

On a quarterly basis, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the University's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.

The President, acting through the Executive Vice President and Chief Operating Officer, shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.

The University shall be specifically exempt from:

§ 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management) as it currently exists and from time to time may be amended;

§§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management) as they currently exist and from time to time may be amended; and

any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.

The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.

#### *E. Infrastructure, Architecture, Ongoing Operations, and Security.*

Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the University. Copies of the policies shall be made available to the Information Technology Investment Board.

The President, acting through the executive Vice President and Chief Operating Officer, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.

For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.

#### *F. Audits.*

Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing association, appropriately tailored to the specific circumstances of the University, which provide for Independent Validation and Verification ("IV&V") of the University's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.

Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the University's Internal Audit Department and the Auditor of Public Accounts.

## EXHIBIT P

MANAGEMENT AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
THE UNIVERSITY OF VIRGINIA  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005

POLICY GOVERNING  
THE PROCUREMENT OF GOODS, SERVICES,  
INSURANCE, AND CONSTRUCTION AND  
THE DISPOSITION OF SURPLUS MATERIALS

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING THE PROCUREMENT OF  
GOODS, SERVICES, INSURANCE AND CONSTRUCTION  
AND THE DISPOSITION OF SURPLUS MATERIALS

## I. PREAMBLE.

A. Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) provided the University of Virginia with autonomy to conduct the procurement of goods and services, including professional services, and construction, on behalf of the University of Virginia Medical Center. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that the University of Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing 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

concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.

**B. Access to Records.**

Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to § 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.

**C. Cooperative Procurements and Alliances.**

In circumstances where the University determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the University that meet its business goals and objectives, the University is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.

**D. Training; Ethics in Contracting.**

The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.

The University shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.

**E. Ethics and University Procurements.**

In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2.

**VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.**

The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the University and the retention of the resulting proceeds by the University.

**VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

The President, acting through the Executive Vice President and Chief Operating Officer or his designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures for the Academic Division and the College, which, in addition to the Rules, implement applicable provisions of law and this Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the University. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate University officials who shall oversee University procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further

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

not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government; and

2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

§ 7. Design-build or construction management contracts authorized. -

A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.

B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

§ 8. Modification of the contract. -

A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.

§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive

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

by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.

§ 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. Cancellation, rejection of bids; waiver of informalities. -

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to

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 debarring 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*



period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

§ 24. Contract Pricing Arrangements. -

A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.

B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

§ 25. Workers' compensation requirements for construction contractors and subcontractors. -

A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

§ 26. Retainage on construction contracts. -

A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -

A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage

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. -

A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

§ 34. Public inspection of certain records. -

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

§ 35. Exemption for certain transactions. -

A. The provisions of these Rules shall not apply to:

1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.

4. The University of Virginia Medical Center.

5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

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

standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

§ 48. Appeal of denial of withdrawal of bid. -

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

§ 49. Determination of nonresponsibility. -

A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or § 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award. -

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than



ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution ("ADR") shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest. - An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution ("ADR") as an administrative procedure.

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions. -*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

*B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.*

*C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

*D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.*

*E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.*

*F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.*

*G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.*

*§ 55. Administrative appeals procedure. -*

*A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution ("ADR") or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution ("ADR") procedure.*

*B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.*

*§ 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and*

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

means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to entities. The University will have the option to receive a subset of vendor related data. Until an enterprise W-9 process is established, the University will be responsible for collection of W-9 information.

VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.

IX. Integration of the University's electronic procurement solution with the University's ERP is the responsibility of the University. The solution must provide for orders, change orders and cancellations.

Guidelines

1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.

2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8PM and 4AM. eVA will transmit registered vendor orders it receives within fifteen minutes or less.

3. Non-exempt orders to un-registered vendors are to be transmitted to eVA for loading to the Data Warehouse. The University shall be responsible for payment of all eVA transaction fees for non-exempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements for unregistered vendor orders.

4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA standard format.

5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

6. eVA Interface standard does not currently support PCard orders; however these orders may be processed via the interface as (a) confirming orders or (b) orders for pcards on file with the vendor.

Schedule

The University shall implement this agreement no later than December 2006.

Metrics

A. The University shall comply with the following Governor's eVA Management

Objective

95% of all non-exempt orders to be processed by eVA. Includes non-exempt orders issued by end users (PCard & LPO) and the central purchasing office. Non-exempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All non-exempt orders not processed by eVA shall be reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

B. The University shall meet the following management objectives for electronic procurement:

1. Provide end users, including purchase-card users, access to an electronic system for buying;

2. Conduct business with eVA registered vendors whenever possible;

3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;

4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;

5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible.

The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes related to payment of eVA transaction fees, by working directly with the vendor whether such vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or CGI-AMS.

The University further agrees that:

a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

c. In the event the University does not provide resolution notification to the eVA Business Manager

- 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  
8944

8945  
8946 POLICY GOVERNING  
8947 HUMAN RESOURCES FOR  
8948 PARTICIPATING COVERED EMPLOYEES  
8949 AND OTHER UNIVERSITY EMPLOYEE  
8950

8951  
8952  
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*

because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of Virginia. Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University has adopted a classification system pursuant to § 23-38.116 of the Act that differs from the classification system administered by the Department of Human Resource Management, the University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the University under the provisions of the State Layoff Policy shall be Participating Covered Employees.

13. *Severance Benefits.* In accordance with the terms of the Act, the University shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee becoming, on such Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies apply.

14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i) establish and maintain a work environment at the University that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the University of Virginia Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide University employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the University is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to University employees of the scope and content of the University alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License or the provision of patient care.

15. *Background Checks.* The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/ professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.

16. *Other Employee Relations Policies and Procedures.* The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.

#### E. Leave and Release Time.

The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is

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

all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other University Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between the University of Virginia and the Department of Human Resource Management (DHRM)..

This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods.

In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.

The University will provide a flat file of designated personnel data. For "Classified Employees", the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees", the data provided will include the University's data values for the designated fields. The University will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

The University will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees", such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the University's compliance with relevant federal and state employment laws and regulations.

The University may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self service). For the self-administered health plans provided by the University of Virginia Academic Division (agency 207) and Medical Center (agency 209), this section is not relevant.

Other reports to be provided by the University include the following:

Monthly Employee Position Report

Annual report on salaried, wage, and contract employees

The undersigned hereby agree to the provisions contained in the MOU.

APPROVALS:

The University of Virginia:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Executive Vice President and Chief Operating Officer

Department of Human Resources Management:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Director, Department of Human Resources Management

#### EXHIBIT R

### MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

#### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

HOUSE  
SUBSTITUTE

SB675H1



**THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT**

**I. PREAMBLE.**

*The Restructured Higher Education Financial and Administrative Operations Act (the "Act"), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.*

*The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.*

**II. DEFINITIONS.**

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Academic Division" means that part of the University known as State Agency 207.*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.*

*"College" means that part of the University operated as the University of Virginia's College at Wise, also known as State Agency 246.*

*"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.*

*"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University and the Commonwealth of Virginia.*

*"Medical Center" means that part of the University consisting of the University of Virginia Medical Center, known as State Agency 209, and related health care and health maintenance facilities.*

*"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*"University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

**III. SCOPE OF POLICY.**

*This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.*

*The University of Virginia's College at Wise shall receive the benefits of this Policy as it is implemented by the University on behalf of the College at Wise, but the College at Wise shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the University's initial Management Agreement with the Commonwealth or that it may be granted by law in the future.*

**IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution*

the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.

#### V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.

The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.

In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Executive Vice President and Chief Operating Officer, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

#### VI. FINANCIAL MANAGEMENT POLICIES.

The President, acting through the Executive Vice President and Chief Operating Officer, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before

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.

The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the University by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.

For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.

#### VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

The President, through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.

#### IX. DISBURSEMENT MANAGEMENT.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange ("EDI") or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House ("ACH") Network. The draw down of funds may be initiated in accordance with the following schedule:

- i) the University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation

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.**