2006 SESSION

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VIRGINIA ACTS OF ASSEMBLY — CHAPTER		
An Act providing management agreements between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and the University of Virginia, respectively, pursuant to the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of the Code of Virginia.	ENROLLED	
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[H 1502] [H 1502]	Ŀ	
Approved		
Be it enacted by the General Assembly of Virginia: 1. That the following Chapter 1 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and Virginia Polytechnic Institute and State University:" CHAPTER 1. MANAGEMENT AGREEMENT BY AND BETWEEN THE COMMONWEALTH OF VIRGINIA	ED	
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	HB1502ER	
WHEREAS, Virginia Tech has satisfied the conditions precedent set forth in subsections A and B of § 23-38.97 of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ 23-38.91 et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by: 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of Virginia Tech held on September 24, 2005, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § 23-38.97 of the Act; 2. Written Application to the Covernor Virginia Tech has submitted to the Covernor a written	ER	
2. Written Application to the Governor. Virginia Tech has submitted to the Governor a written Application dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that Virginia Tech is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that Virginia Tech has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and 3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act, the Governor has found that Virginia Tech has fulfilled the requirements of subdivision A 2 of § 23-38.97 of the Act, and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with Virginia Tech; and WHEREAS, Virginia Tech is therefore authorized to enter into this Management Agreement as provided in subsection D of § 23-38.88 and Subchapter 3 of the Act.		
AGREEMENT NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and Virginia Tech do		

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.
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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:
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<i>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:</i>
1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of Virginia Tech held on September 24, 2005, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § 23-38.97 of the Act;
2. Written Application to the Governor. Virginia Tech has submitted to the Governor a written
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Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate
Committee on Education and Health, expressing the sense of its Board of Visitors that Virginia Tech is
qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that Virginia Tech has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and 3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act, the Governor
has found that Virginia Tech has fulfilled the requirements of subdivision A 2 of § 23-38.97 of the Act,
and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of
the Commonwealth with Virginia Tech; and
WHEREAS, Virginia Tech is therefore authorized to enter into this Management Agreement as provided in subsection D of § 23-38.88 and Subchapter 3 of the Act.
AGREEMENT
NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and Virginia Tech do
now agree as follows: ARTICLE 1. DEFINITIONS.
As used in this Agreement, the following terms have the following meanings, unless the context
requires otherwise:
"Act" means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
"Agreement" means "Management Agreement."
"Board of Visitors" means the Board of Visitors of Virginia Tech.
"Covered Employee" means any person who is employed by Virginia Tech on either a salaried or
wage basis.
"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has

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

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

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

64 "Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and 65 Virginia Tech.

66 "Public institution of higher education" means those two-year and four-year institutions enumerated 67 in § 23-14 of the Code of Virginia.

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

71 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

72 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.

73 Subchapter 3 of the Act provides that, upon the execution of, and as of the effective date for, this 74 Management Agreement, Virginia Tech shall become a Covered Institution entitled to be granted by the 75 Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act that are 76 expressly contained in this Management Agreement. In general, subject to its management agreement 77 with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act and this 78 Management Agreement is intended to replace (i) the post-General Assembly authorization 79 prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a 80 variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to 81 82 Subchapter 3 of the Act and its management agreement with the Commonwealth.

83 SECTION 2.1.1. Assessments and Accountability. Virginia Tech and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board 84 85 of Visitors polices attached hereto as Exhibits A through F, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint 86 87 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or 88 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or 89 Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by 90 law other than the Act.

91 SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and 92 limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; 93 Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech by this 94 95 Management Agreement all the powers and authority contained in certain policies adopted by the Board 96 of Visitors of Virginia Tech attached hereto as Exhibits A through F and governing (1) the undertaking 97 and implementation of capital projects, and other acquisition and disposition of property (Exhibit A), (2)98 the leasing of property, including capital leases (Exhibit B), (3) information technology (Exhibit C), (4) 99 the procurement of goods, services, including certain professional services, insurance, and construction 100 (Exhibit D), (5) human resources (Exhibit E), and (6) its system of financial management (Exhibit F), 101 including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to establish tuition, 102 fees, room, board, and other charges consistent with sum sufficient appropriation authority for 103 non-general funds as provided by the Governor and the General Assembly in the Commonwealth's 104 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, 105 106 and in one or more of the Board of Visitors policies attached hereto as Exhibits A through F, the 107 Commonwealth and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech 108 all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of 109 the Act.

110 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 111 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 112 of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits A through F. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its 113 114 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 115 adopted by the Board and attached hereto as Exhibits A through F, to a person or persons within the 116 117 University.

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

119 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any 120 intent during the next biennium to withdraw from any health or other group insurance or risk 121 management program made available to the University through any agency, body corporate, political 122 subdivision, authority, or other entity of the Commonwealth, and in which the University is then 123 participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any 124 such decision and to determine the additional costs to the Commonwealth that would result from any 125 such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds 126 to withdraw from such health or other group insurance or risk management program, the University 127 shall, pursuant to subdivision D 2 c of § 23-38.88, reimburse the Commonwealth for all such additional 128 costs attributable to such withdrawal as determined by the Commonwealth's actuaries.

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

136 SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to 137 § 23-38.110 of the Act and subject to the provisions of this Management Agreement, Virginia Tech may 138 be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ 2.2-4300 139 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the 140 VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of 141 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 142 Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules 143 144 Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) 145 attached to that Policy as Attachment I constitute the policies and uniform deviations from the VPPA 146 required by subsections A and B of § 23-38.110 of the Act.

147 Subsection D of § 23-38.110 of the Act requires that Virginia Tech identify the public, educational, 148 and operational interests served by any procurement rule or rules that deviate from those in the VPPA. 149 The adopted Board of Visitors policy on procurement and the Procurement Rules provide Virginia Tech 150 with the autonomy to administer its procurement process while fully adhering to the principle that 151 competition should be sought to the maximum extent feasible. This autonomy will better position 152 Virginia Tech to support the requirements of its growing teaching, research and outreach missions. 153 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 154 meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be 155 reduced. Taken collectively, Virginia Tech's procurement policies and rules that differ from those 156 157 required by the VPPA will enhance procurement "best practices" as they currently are being observed 158 within the higher education community nationally. Further, these changes will provide efficiencies to both Virginia Tech and public sector suppliers. 159

160 SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that 161 a Covered Institution include in its management agreement with the Commonwealth the quantification of 162 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 163 164 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 165 from the additional authority granted to Virginia Tech pursuant to Subchapter 3 of the Act and that 166 167 such cost savings will be part of the determinations made during the reviews, assessments, and audits to 168 be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint 169 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and 170 as otherwise described in Section 2.1.1 above.

171 SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that Virginia Tech 172 shall continue to fully participate in, and receive funding support from the many and varied programs 173 established now or in the future by the Commonwealth to provide support for Virginia's public 174 institutions of higher education and for Virginians attending such institutions, including but not limited 175 to: the state capital outlay and bond financing initiatives undertaken from time to time by the 176 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ 23-30.24 et 177 seq.) of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the 178 Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student

179 financial assistance programs; and other statewide programs or initiatives that exist, or may be 180 established, in support of the Commonwealth's higher education institutions, programs, or activities.

181 SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § 23-38.88 of the Act, the only

182 implied authority granted to Virginia Tech by this Management Agreement is that implied authority that 183 is actually necessary to carry out the expressed grant of financial or operational authority contained in

184 this Agreement or in the policies adopted by Virginia Tech's Board of Visitors and attached hereto as Exhibits A through F. 185

186 SECTION 2.1.9. Exercise of Authority. Virginia Tech and the Commonwealth acknowledge and agree 187 that the execution of this Management Agreement constitutes the conclusion of a process that, as of the 188 effective date of this Agreement, confers upon Virginia Tech the enhanced authority and operating 189 flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. 190 Therefore, without any further conditions or requirements, Virginia Tech shall, on and after the effective 191 date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits A 192 through F, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the 193 194 extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited 195 by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through 196 F.

197 Virginia Tech and the Commonwealth also acknowledge and agree that, pursuant to subsection A of 198 § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of 199 Visitors of Virginia Tech shall assume full responsibility for management of Virginia Tech, subject to the 200 requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this 201 Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The 202 Board of Visitors shall be fully accountable for (a) the management of Virginia Tech as provided in the 203 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, 204 and (c) meeting such other provisions as are set forth in this Management Agreement. 205

SECTION 2.2. State Goals.

206 SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § 23-38.88 of the Act, prior to August 1, 2005, the Board of 207 208 Visitors of Virginia Tech adopted the resolution setting forth its commitment to the Governor and the 209 General Assembly to meet the State goals specified in that subsection B. 210

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

211 1. In addition to its six-year target of achieving \$227 million in external research by 2011-12 [which 212 is the last year of the six-year plan, the University commits to match from institutional funds, other 213 than general funds or tuition, on a dollar for dollar basis, any additional research funds provided by 214 the State in the Appropriation Act above the amount provided from institutional funds for research in 215 2005-06.

216 2. In a concerted effort to provide educational opportunities to Virginia students attending 217 institutions in the Virginia Community College System (VCCS) and Richard Bland College, the University commits to work with the University of Virginia and the College of William and Mary in 218 219 Virginia to establish a program under which these three institutions will increase significantly the number of such students transferring to their institutions. Specifically, pursuant to this program, the University, the University of Virginia and the College of William and Mary in Virginia collectively 220 221 222 commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the 223 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the 224 number enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii) 225 by the end of the decade, not less than approximately 650 new such transfer students each year over the 226 number enrolled in 2004-05, for a total of approximately 1,250 such transfer students each year. The 227 three institutions have agreed that they will mutually determine how to divide the responsibility for these 228 additional transfer students equitably among themselves.

229 3. As an institutional priority and obligation, the University commits to the Governor and General 230 Assembly to work meaningfully and visibly with an economically distressed region or local area of the 231 Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in 232 education, income, employment, and other factors. The University commits to establish a formal 233 partnership with that area to develop jointly a specific action plan that builds on the University's 234 programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise 235 to stimulate economic development in the area to make the area more economically viable, and to 236 improve student achievement and teacher and administrator skill sets in a school division in that area.

237 The University shall submit the action plan to the Governor and General Assembly by no later than 238 December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each 239 year on its progress in implementing the action plan during the prior fiscal year.

240 SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the 241 Code of Virginia, Virginia Tech, along with all other public institutions of higher education of the 242 Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia 243 (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing Virginia Tech's academic, 244 financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. 245 Subsection A of § 23-9.2:3.02 of the Code of Virginia, requires Virginia Tech to update this Six-Year 246 Plan by October 1 of each odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a 247 management agreement address, among other issues, such matters as Virginia Tech's in-state 248 undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy 249 for in-state undergraduate students. These matters are addressed below and in Virginia Tech's Six-Year 250 Plan submitted to SCHEV, and the parties therefore agree that Virginia Tech's Six-Year Plan and the 251 description below meet the requirement of subsection B of § 23-38.97 of the Act.

252 Subsection B of § 23-38.104 of the Act requires the Board of Visitors of Virginia Tech to include in 253 this Management Agreement Virginia Tech's commitment to provide need-based grant aid for middle-254 and lower-income Virginia students in a manner that encourages student enrollment and progression 255 without respect to potential increases in tuition and fees. Virginia Tech's commitment in this regard is 256 clear. Virginia Tech recognizes that the cost of higher education as a percentage of family income has 257 increased steadily in recent years for low and moderate income families. Since the University anticipates 258 further increases in tuition and fees during the six year period of 2006-2012, the University developed 259 its Funds for the Future program, which shall be substantially as described in the remainder of this 260 Section 2.2.2, as may be amended from time to time by the Board of Visitors of Virginia Tech and 261 reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on 262 Finance and the House Committee on Appropriations. The Funds for the Future program was developed 263 to increase institutional funds and other fund sources to moderate the impact of future tuition and fees 264 increases for Virginia undergraduates from families with adjusted gross income of \$100,000 or less, as 265 determined by federal financial aid regulations.

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

273 Virginia Tech serves a large number of students with financial need. Based on 2003-04 enrollment 274 data, the University estimates that for the 2006-07 academic year approximately 5,636 students, 275 representing over 36% of the Virginia Tech undergraduate student body, will receive incremental 276 benefits under the Funds for the Future program. The institution will draw upon the full range of 277 available resources to increase grant aid to these students and has established very aggressive goals for 278 its institutional and private funds resources to create and sustain this program. As such, the University 279 program is also based on the commitment of additional state General Fund support, consistent with the 280 levels identified in its Six-Year Financial Plan; these amounts are based upon SCHEV calculations for 281 incremental General Fund appropriations. Consistent with the current financial aid environment, the 282 University also anticipates that existing federal, state, and University loan programs will be available, 283 as needed, to assist students in addressing their annual costs of education not addressed by existing 284 grant aid programs, the Funds for the Future program, or other available resources.

285 The Commonwealth and Virginia Tech agree that this commitment meets the requirements of **286** subsection B of § 23-38.104 of the Act.

287 SECTION 2.3. Authority Granted to Virginia Cooperative Extension and the Agriculture Experiment 288 Station Division. Virginia Cooperative Extension and the Agriculture Experiment Station Division shall 289 receive the benefits of the additional financial and operational authority granted by this Management 290 Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits A through F are 291 implemented by Virginia Tech on behalf of Virginia Cooperative Extension and the Agriculture 292 Experiment Station Division, but Virginia Cooperative Extension and the Agriculture Experiment Station 293 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 294 295 and operational authority that it had prior to the effective date of this Management Agreement or that it 296 may be granted by law in the future.

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

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

301 to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is 302 a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits A through F, the provisions of the Appropriation Act shall control, and shall 303 304 305 continue to control unless provided otherwise by law.

306 SECTION 2.4.2. Virginia Tech's Enabling Legislation. As provided in subsection C of § 23-38.91 of 307 the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and Virginia Tech's 308 Enabling Legislation, the Enabling Legislation shall control.

309 SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § 23-38.92 of the 310 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, 311 312 supervision, regulation, and control of public institutions of higher education shall be applicable to 313 Virginia Tech as provided by the express terms of this Management Agreement. As further provided in subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any 314 provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this 315 Management Agreement shall control. 316

317 SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of 318 § 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, 319 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, 320 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 321 of Virginia, Virginia Tech shall remain a public institution of higher education of the Commonwealth 322 following the effective date of this Management Agreement, and shall retain the authority granted and 323 any obligations required by such provisions, unless and until provided otherwise by law other than the 324 Act. In addition, Virginia Tech shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.), Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.), Chapter 4.4 (§ 23-38.45 et seq.), Chapter 4.4:1 (§ 23-38.53:1 et seq.), Chapter 4.4:2 (§ 23-38.53:4 et seq.), Chapter 4.4:4 (§ 23-38.54:4 et seq.), Chapter 4.4:4 (§ 23-38.54:4 et seq.), Chapter 4.4:2 (§ 23-38.54:4 et seq.), Chapter 4.4:4 et seq.), Chapter 4.4:2 (§ 23-38.54:4 et seq.), Chapter 4.4:2 (§ 23-38.54:4 et seq.), Chapter 4.4:4 et seq.), Chapter 4.4:4 et set 325 326 327 328 329 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 330 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 331 seq.), unless and until provided otherwise by law other than the Act.

332 SECTION 2.4.5. Public Access to Information. As provided in § 23-38.95 of the Act, Virginia Tech 333 shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information 334 Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct 335 business pursuant to § 2.2-3709, if expressly named therein, and, in all cases, may conduct business as a "state public body" for purposes of subsection B of § 2.2-3708. SECTION 2.4.6. Conflicts of Interests. As provided in § 23-38.96 of the Act, the provisions of the 336

337 338 State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) of the Code of 339 Virginia, that are applicable to officers and employees of a state governmental agency shall continue to 340 apply to the members of the Board of Visitors of Virginia Tech and to its Covered Employees.

341 SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other 342 powers and authorities granted to Virginia Tech pursuant to any other sections of the Code of Virginia, 343 including other provisions of the Act, are not affected by this Management Agreement or the Board 344 policies attached hereto as Exhibits A through F.

345 ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, 346 MANAGEMENT AGREEMENT.

347 SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the 348 Board of Visitors policies attached hereto as Exhibits A through F shall be reported to the Secretaries 349 of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on 350 Finance and the House Committee on Appropriations and shall be posted on the University's website. 351 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 352 353 material change or deviation shall require the execution by the parties of an amendment to this 354 Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of 355 § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to 356 subdivision D 4 of § 23-38.88 of the Act. 357

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

358 SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § 23.38.88, and § 23-38.98, of the Act, if 359 the Governor makes a written determination that Virginia Tech is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor 360 361 shall provide a copy of that written determination to the Rector of the Board of Visitors of Virginia

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Tech and to the members of the General Assembly, and (ii) Virginia Tech shall develop and implement 362 363 a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial 364 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 365 366 Assembly. If after a reasonable period of time after the corrective action plan has been implemented by 367 Virginia Tech, the Governor determines that the institution is not yet in substantial compliance with this 368 Management Agreement or the requirements of the Act, the Governor may void this Management 369 Agreement. Upon the Governor voiding this Management Agreement, Virginia Tech shall no longer be 370 allowed to exercise any restructured financial or operational authority pursuant to the provisions of 371 Subchapter 3 of the Act unless and until Virginia Tech has entered into a subsequent management 372 agreement with the Secretary or Secretaries designated by the Governor or the voided Management 373 Agreement is reinstated by the General Assembly. 374 SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § 23-38.88 of the Act, the 375 General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to 376 § 23-38.98 of the Act, Virginia Tech's status as a Covered Institution governed by Subchapter 3 of the 377 Act may be revoked by an act of the General Assembly (i) if Virginia Tech fails to meet the 378 requirements of Subchapter 3 of the Act, or (ii) if Virginia Tech fails to meet the requirements of this 379 Management Agreement. 380 ARTICLE 4. GENERAL PROVISIONS. 381 SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, 382 shall be construed as conferring any third-party beneficiary status on any person or entity. 383 SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § 23-38.88 of the Act, Virginia Tech 384 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 385 386 Act; provided that the Virginia Tort Claims Act, (§ 8.01.195.1 et seq.) of the Code of Virginia, and its 387 limitations on recoveries shall remain applicable with respect to Virginia Tech. 388 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 389 2010. 390 WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of 391 November, 2005, and shall become effective on the effective date of legislation enacted into law 392 providing for the terms of such Agreement. 393 394 EXHIBIT A 395 396 MANAGEMENT AGREEMENT 397 **BETWEEN** 398 THE COMMONWEALTH OF VIRGINIA 399 AND 400 VIRGINIA POLYTECHNIC INSTITUTE 401 AND STATE UNIVERSITY 402 PURSUANT TO 403 THE RESTRUCTURED HIGHER EDUCATION 404 FINANCIAL AND ADMINISTRATIVE OPERATIONS 405 ACT OF 2005 406 407 POLICY GOVERNING 408 CAPITAL PROJECTS 409 410 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE 411 AND STATE UNIVERSITY 412 POLICY GOVERNING CAPITAL PROJECTS 413 I. PREAMBLE. 414 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 415 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 416 417 of its capital projects. In general, status as a Covered Institution is designed to replace the 418 post-authorization system of reviews, approvals, policies and procedures carried out by a variety of 419 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 420 University's system for carrying out its capital outlay process as a Covered Institution is to be governed 421

by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the

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423 Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition 424 of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, 425 Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted 426 Board of Visitors policies regarding the University's capital projects, whether funded by a state general 427 fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to 428 encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 429 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation 430 Act, or any other sections of the Code of Virginia, including other provisions of the Act and the 431 University's Enabling Legislation, are not affected by this Policy. 432 II. DEFINITIONS. 433 As used in this policy, the following terms shall have the following meanings, unless the context 434 requires otherwise: 435 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 436 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 437 State University. 438 439 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting **440** Principles pursuant to the pronouncement of the Financial Accounting Standards Board. 441 "Capital Professional Services" means professional engineering, architecture, land surveying and 442 landscape architecture services related to capital projects. 443 "Capital project(s)" means the acquisition of any interest in land, including improvements on the 444 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital 445 Leases. 446 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a 447 public institution of higher education of the Commonwealth of Virginia that has entered into a 448 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the 449 Act. 450 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of 451 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and 452 missions of the individual public institutions of higher education of the Commonwealth. 453 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on 454 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing 455 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases. 456 "State Tax Supported Debt" means bonds, notes, or other obligations issued under Article X, Section 457 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 458 general government funds, as defined in the December 20, 2004 Report to the Governor and General 459 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time. "University" means Virginia Polytechnic Institute and State University, consisting of the University 460 Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station 461 462 Division (State Agency 229). III. SCOPE OF POLICY. 463 464 This Policy applies to the planning and budget development for capital projects, capital project 465 authorization, and the implementation of capital projects, whether funded by a general fund 466 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other 467 sources. 468 This Policy provides guidance for 1) the process for developing one or more capital project 469 programs for the University, 2) authorization of new capital projects, 3) procurement of Capital 470 Professional Services and construction services, 4) design reviews and code approvals for capital 471 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 472 473 requirements. 474 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY. 475 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 476 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 477 478 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 479 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 480 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 481 implementation of those duties and responsibilities pursuant to the University's usual delegation policies

482 and procedures.

483 *V. CAPITAL PROGRAM.*

484 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt **485** a system for developing one or more capital project programs that defines or define the capital needs of 486 the University for a given period of time consistent with the University's published Master Plan. This 487 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of 488 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be 489 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from **490** State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board 491 may approve amendments to the program for Major Capital Projects annually or more often if 492 circumstances warrant. It shall be University policy that each capital project program shall meet the 493 University's mission and institutional objectives, and be appropriately authorized by the University. 494 Moreover, it shall be University policy that each capital project shall be of a size and scope to provide 495 for the defined program needs, designed in accordance with all applicable building codes and 496 handicapped accessibility standards as well as the University's design guidelines and standards, and 497 costed to reflect current costs and escalated to the mid-point of anticipated construction.

498 VI. AUTHORIZATION OF CAPITAL PROJECTS.

499 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its 500 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief 501 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other 502 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund 503 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 504 Board of Visitors approval and those preappropriation approvals of the State's governmental agencies 505 then applicable, and shall follow the State's process for capital budget requests.

506 It shall be the policy of the University that the implementation of capital projects shall be carried 507 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 508 509 Executive Vice President and Chief Operating Officer, for all other capital projects. The President, 510 acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence 511 to this requirement. Accordingly, the budget, size and scope of a capital project shall not be materially 512 changed beyond the plans and justifications that were the basis for the capital project's approval, either 513 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 514 515 Chief Operating Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors 516 authorization at any time but must include a statement of urgency if not part of the approved Major 517 Capital Project program.

518 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 519 SERVICES.

520 It shall be the policy of the University that procurements shall result in the purchase of high quality 521 services and construction at reasonable prices and shall be consistent with the Policy Governing the 522 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 523 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and 524 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed 525 to:

526 A. Seeking competition to the maximum practical degree, taking into account the size of the 527 anticipated procurement, the term of the resulting contract and the likely extent of competition;

528 B. Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the 529 appearance of any impropriety prohibited by State law or University policy; 530

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

531 D. Providing access to the University's business to all qualified vendors, firms and contractors, with 532 no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to 533 engage in cooperative procurements and to meet special needs of the University;

534 E. Including in contracts of more than \$10,000 the contractor's agreement not to discriminate 535 against employees or applicants because of race, religion, color, sex, national origin, age, disability or 536 other basis prohibited by State law except where there is a bona fide occupational qualification 537 reasonably necessary to the contractor's normal operations; and

538 F. Providing for a non-discriminatory procurement process, and including appropriate and lawful 539 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small 540 businesses and to promote and encourage a diversity of suppliers.

541 The President, acting through the Executive Vice President and Chief Operating Officer, is 542 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: 543

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

545 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, 546 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of 547 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

548 B. A prequalification procedure for contractors or products;

549 C. A procedure for special construction contracting methods, including but not limited to 550 design-build and construction management contracts; and 551

D. A prompt payment procedure.

552 The University also may enter into cooperative arrangements with other private or public health or 553 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, 554 in the judgment of the University, the purposes of this Policy will be furthered. 555

VIII. DESIGN REVIEWS AND CODE APPROVALS.

556 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final 557 Major Capital Project authorization based on the size, scope and cost estimate provided with the design. 558 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 559 560 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and 561 project authorization based on the size, scope and cost estimate provided with the design. It shall be the 562 University's policy that all capital projects shall be designed and constructed in accordance with 563 applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable 564 accessibility code.

565 The President, acting through the Executive Vice President and Chief Operating Officer, shall 566 designate a Building Official responsible for building code compliance by either (i) hiring an individual 567 to be the University Building Official, or (ii) continuing to use the services of the Department of 568 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 569 employee, a registered professional architect or engineer, and certified by the Department of Housing 570 571 and Community Development to perform this Building Official function. The University Building Official 572 shall issue building permits for each capital project required by the VUSBC to have a building permit, 573 and shall determine the suitability for occupancy of, and shall issue certifications for building 574 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 575 576 project and that such capital project has been inspected by the State Fire Marshal or his designee. 577 When serving as the University Building Official, such individual shall organizationally report directly 578 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it 579 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 580 § 36-137 of the Code of Virginia, for such purpose and who shall review plans, specifications and 581 582 documents for compliance with building codes and standards and perform required inspections of work 583 in progress and the completed capital project. No individual licensed professional architect or engineer 584 hired or contracted with to perform these functions shall also perform other building code-related 585 design, construction, facilities-related project management or facilities management functions for the 586 University on the same capital project. 587

IX. ENVIRONMENTAL IMPACT REPORTS.

588 It shall be the policy of the University to assess the environmental, historic preservation, and 589 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts 590 to the extent practicable. The University shall develop a procedure for the preparation and approval of 591 environmental impact reports for capital projects, in accordance with State environmental, historic 592 preservation, and conservation requirements generally applicable to capital projects otherwise meeting 593 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of 594 \$300,000 or more. 595

X. BUILDING DEMOLITIONS.

596 It shall be the policy of the University to consider the environmental and historical aspects of any 597 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The **598** University shall develop a procedure for the preparation and review of demolition requests, including 599 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review 600 Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding 601 602 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported 603 Debt, general laws applicable to State owned property shall apply.

604 XI. BUILDING OR LAND ACOUISITIONS.

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

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606 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall **607** 608 ensure that the project management system implemented pursuant to Section XIII below provides for a 609 review and analysis of all pertinent matters relating to the acquisition of buildings and land as any 610 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 611 612 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 613 614 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 615 pertaining to the acquisition of buildings or land for capital projects are carried out. 616

617 A. Environmental and Land Use Considerations.

618 It is the policy of the University to reasonably cooperate with each locality affected by the 619 acquisition. Such cooperation shall include but not be limited to furnishing any information that the 620 locality may reasonably request and reviewing any requests by the locality with regard to any such 621 acquisition. The University shall consider the zoning and comprehensive plan designation by the locality 622 of the building or land and surrounding parcels, as well as any designation by State or federal agencies 623 of historically or archeologically significant areas on the land. Nothing herein shall be construed as 624 requiring the University to comply with local zoning laws and ordinances.

625 B. Infrastructure and Site Condition.

626 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 627 628 management systems implemented under Section XIII below provide for a review of the following 629 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 630 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular 631 632 ingress and egress to serve the contemplated use of the building or land; that utilities and other services 633 to the land are adequate or can reasonably be provided or have been provided in the case of building 634 acquisitions; and that the condition and grade of the soils have been examined to determine if any 635 conditions exist that would require extraordinary site work or foundation systems.

636 *C. Title and Survey.*

637 A survey shall be prepared for any real property acquired, and an examination of title to the real 638 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title 639 insurance shall be procured from a title insurance company authorized to do business in the 640 Commonwealth. Based upon the survey and title examination or report, the President, acting through 641 the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real 642 property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, 643 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. 644

645 D. Appraisal.

646 An appraisal shall be conducted of the real property to be acquired to determine its fair market 647 value and the consistency of the fair market value with the price agreed upon by the University.

648 XII. BUILDING OR LAND DISPOSITIONS.

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

654 XIII. PRÔJECT 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.

660 The project management systems for capital projects shall be designed to ensure that such projects 661 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely 662 related subjects such as selection of architects or policies applicable to University buildings and 663 grounds.

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

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667 668 669	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
670 671	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
672	appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project
673	constructs improvements on land, or renovates property, that originally was acquired or constructed in
674 675	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
676	appropriated by the General Assembly and, if the cost of such improvements or renovations is
677	reasonably expected to exceed two million dollars, the decision to undertake such improvements or
678	renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine,
679 680	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,
681	prior to the commencement of construction, and at the time of acceptance of any such capital project.
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683	EXHIBIT B
684 685	MANAGEMENT AGREEMENT
686	BETWEEN
687	THE COMMONWEALTH OF VIRGINIA
688 680	AND VIDCINIA DOLYTECHNIC INSTITUTE
689 690	VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
691	PURSUANT TO
692	THE RESTRUCTURED HIGHER EDUCATION
693 694	FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005
695	ACT OF 2005
696	POLICY GOVERNING LEASES OF REAL PROPERTY
697 698	
698 699	THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
700	POLICY GOVERNING LEASES OF REAL PROPERTY
701	I. PREAMBLE.
702 703	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
703 704	Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The
705	Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10
706	(§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered
707 708	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
709	be governed by policies adopted by the Board of Visitors. The following provisions of this Policy
710	constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the
711	University.
712 713	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
714	Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
715	and the University's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this
716 717	Policy. II. DEFINITIONS.
717 718	The following words and terms, when used in this Policy, shall have the following meaning unless
719	the context clearly indicates otherwise:
720	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
721 722	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
723	University.
724	"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting
725	Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

726 "Covered Institution" means a public institution of higher education of the Commonwealth of 727 Virginia that has entered into a Management Agreement with the Commonwealth to be governed by

728 Subchapter 3 of the Act.

- 729 "Expense Lease" means an Operating Lease of real property under the control of another entity to 730 the University.
- 731 "Income Lease" means an Operating Lease of real property under the control of the University to 732 another entity.
- 733 "Lease" or "Leases" means any type of lease involving real property.
- 734 "Operating Lease" means any lease involving real property, or improvements thereon that is not a 735 *Capital Lease.*
- 736 "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 737
- 738 Division (State Agency 229).
- 739 III. SCOPE OF POLICY.
- 740 This Policy provides guidance for the implementation of all University Leases.
- 741 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
- 742 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 743 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 744 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 745 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 746 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 747 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 748 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 749 and procedures. 750
 - V. REQUIREMENTS FOR LEASES.
 - A. Factors to Be Considered When Entering into Leases.
- 752 All Leases shall be for a purpose consistent with the mission of the University. The decision to enter 753 into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, 754 consideration of all costs of occupancy, and a determination that the use of the property to be leased is 755 necessary and is efficiently planned. Leases shall also conform to the space planning procedures that 756 may be adopted by the President, acting through the Executive Vice President and Chief Operating 757 Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the 758 space is intended.
- 759 B. Competition to Be Sought to Maximum Practicable Degree.
- 760 Competition shall be sought to the maximum practicable degree for all Leases. The President, acting 761 through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases 762 are procured through competition to the maximum degree practicable and to determine when, under 763 guidelines that may be developed and adopted by the President, acting through the Executive Vice 764 President and Chief Operating Officer, it is impractical to procure Leases through competition.
- 765 C. Approval of Form of Lease Required.
- 766 The form of Leases entered into by the University shall be approved by the University's legal 767 counsel. 768
 - D. Execution of Leases.
- All Leases entered into by the University shall be executed only by those University officers or 769 770 persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as 771 may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as 772 may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital 773 Projects adopted by the Board as part of the Management Agreement between the Commonwealth and 774 the University, no other University approval shall be required for leases or leasing, nor state approval 775 required except in the case of leases of real property as may be governed by general state law in 776 accordance with § 23-38.109 and § 23- 38.112 of the Act.
- 777 E. Capital Leases.
- 778 The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization 779 process included in the Policy Governing Capital Projects adopted by the Board as part of the 780 Management Agreement between the Commonwealth and the University.
- 781 F. Compliance with Applicable Law.
- 782 All Leases of real property by the University shall be consistent with any requirements of law that 783 are contained in the Act or are otherwise applicable.
- 784 G. Certification of Occupancy.
- 785 All real property covered by an Expense Lease or leased by the University under a Capital Lease 786 shall be certified for occupancy by the appropriate public body or building official.
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790	MANAGEMENT AGREEMENT
791	BETWEEN
792	THE COMMONWEALTH OF VIRGINIA
793	AND
794	VIRGINIA POLYTECHNIC INSTITUTE
795	AND STATE UNIVERSITY
796 797	PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION
797 798	FINANCIAL AND ADMINISTRATIVE OPERATIONS
799	ACT OF 2005
800	
801	POLICY GOVERNING
802	INFORMATION TECHNOLOGY
803	
804	THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
805	AND STATE UNIVERSITY
806	POLICY GOVERNING INFORMATION TECHNOLOGY
807 808	I. PREAMBLE. The Restructured Higher Education Financial and Administrative Operations Act (the Act) Chapter
809	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
810	of higher education in the Commonwealth of Virginia that have entered into a Management Agreement
811	with the Commonwealth "may be exempt from the provisions governing the Virginia Information
812	Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2. of the Code of Virginia, and the
813	provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24
814	(§ 2.2-2457 et seq.) of Title 2.2; provided, however, that the governing body of [such] institution
815	shall adopt, and [such] institution shall comply with, policies" that govern the exempted provisions.
816	See § 23-38.111 of the Code of Virginia. This Information Technology Policy shall become effective
817 818	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.
819	The Board of Visitors of Virginia Polytechnic Institute and State University is authorized to adopt
820	this Information Technology Policy pursuant to § 23-38.111 of the Code of Virginia.
821	II. DEFINITIONS.
822	As used in this Information Technology Policy, the following terms have the following meanings,
823	unless the context requires otherwise:
824	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
825	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
826	"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
827 828	State University. "Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the
828 829	Code of Virginia, as it currently exists and from time to time may be amended.
830	"Major information technology project" or "major IT project" shall have the same meaning as set
831	forth in § 2.2-2006 of the Code of Virginia, as it currently exists and from time to time may be
832	amended.
833	"Policy" means this Information Technology Policy adopted by the Board of Visitors.
834	"State Chief Information Officer" or "State CIO" means the Chief Information Officer of the
835	Commonwealth of Virginia.
836 837	"University" means Virginia Polytechnic Institute and State University, consisting of the University
838	Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).
839	III. SCOPE OF POLICY.
840	This Policy is intended to cover and implement the authority that may be granted to Virginia
841	Polytechnic Institute and State University pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This
842	Policy is not intended to affect any other powers and authorities granted to the University pursuant to
843	the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University's
844	enabling legislation as that term is defined in § 23-38.89 of the Act.
845 846	This Policy shall govern the University's information technology strategic planning, expenditure
846 847	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
848	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
849	and § 23-38.111 of the Code of Virginia, therefore, the University shall be exempt from those provisions

of the Code of Virginia, including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia 850 Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology 851 852 Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the 853 University's information technology strategic planning, expenditure reporting, budgeting, project 854 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 855 856 provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of 857 Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of 858 the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth 859 and that do not govern information technology strategic planning, expenditure reporting, budgeting, 860 project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or 861 on behalf of the University.

The procurement of information technology and telecommunications goods and services, including 862 863 automated data processing hardware and software, shall be governed by the Policy Governing the 864 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 865 approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and 866 Construction that are incorporated in and attached to that Policy.

867 IV. GENERAL PROVISIONS.

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

869 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 870 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 871 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 872 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, 873 874 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 875 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 876 and procedures. 877 B. Strategic Planning.

878 The President, acting through the Vice President for Information Technology and Chief Information 879 Officer, shall be responsible for overall IT strategic planning at the University, which shall be linked to 880 and in support of the University's overall strategic plan. At least 45 days prior to each fiscal year, the 881 President, acting through the Vice President for Information Technology and Chief Information Officer, 882 shall make available the University's IT strategic plan covering the next fiscal year to the State CIO for 883 his review and comment with regard to the consistency of the University's plan with the intent of the 884 currently published overall five-year IT strategic plan for the Commonwealth developed by the State 885 CIO pursuant to § 2.2-2007 of the Code of Virginia and into which the University's plan is to be 886 *incorporated.* 887

C. Expenditure Reporting and Budgeting.

888 The President, acting through the Executive Vice President and Chief Operating Officer, shall 889 approve and be responsible for overall IT budgeting and investments at the University. The University's 890 IT budget and investments shall be linked to and in support of the University's IT strategic plan, and 891 shall be consistent with general University policies, the Board-approved annual operating budget, and 892 other Board approvals for certain procurements. By October I of each year, the President, acting 893 through the Executive Vice President and Chief Operating Officer, shall make available to the State CIO 894 and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures. 895 The University shall be specifically exempt from:

896 Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget 897 requests), as it currently exists and from time to time may be amended;

898 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund), as 899 they currently exist and from time to time may be amended; and

900 Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting 901 and budgeting, as it currently exists and from time to time may be amended.

902 D. Project Management.

903 Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies, 904 standards, and guidelines developed by the Commonwealth or those based upon industry best practices 905 for project management as defined by leading IT consulting firms, leading software development firms, 906 or a nationally-recognized project management association, appropriately tailored to the specific 907 circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made 908 available to the Information Technology Investment Board.

909 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 910

911 infrastructure, provision of technology to support research, database development, implementation of 912 new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day 913 management of projects shall be the responsibility of appointed project directors and shall be in accord 914 with the project management policies, standards, and guidelines adopted by the Board, as amended and 915 revised from time to time. 916 On a quarterly basis, the President, acting through the Vice President for Information Technology and Chief Information Officer, shall report to the Information Technology Investment Board on the 917 918 budget, schedule, and overall status of the University's major IT projects. This requirement shall not 919 apply to research projects, research initiatives, or instructional programs. The President, acting through the Vice President for Information Technology and Chief Information 920 921 Officer in cooperation with the Provost and Executive Vice President and Chief Operating Officer, shall 922 be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial 923 approval. 924 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 925 management) as it currently exists and from time to time may be amended; 926 927 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management) 928 as they currently exist and from time to time may be amended; and 929 Any other substantially similar provision of the Code of Virginia governing IT project management, 930 as it currently exists or from time to time may be amended. 931 The State CIO and the Information Technology Investment Board shall continue to have the authority 932 regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of 933 § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall 934 continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, 935 any identified problems before a project is terminated. 936 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 937 938 939 Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific 940 circumstances of the University. Copies of the policies shall be made available to the Information 941 Technology Investment Board. 942 The President, acting through the Vice President for Information Technology and Chief Information 943 Officer, in cooperation with the Provost and Executive Vice President and Chief Operating Officer, shall 944 be responsible for implementing such policies, standards, and guidelines adopted by the Board, as 945 amended and revised from time to time. For purposes of implementing this Policy, the President shall 946 appoint an existing University employee to serve as a liaison between the University and the State CIO. 947 F. Audits. 948 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 949 950 defined by leading IT experts, including consulting firms, or a nationally recognized project auditing 951 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 952 953 policies, standards, and guidelines, as amended and revised from time to time, shall be made available 954 to the Information Technology Investment Board. 955 Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, 956 architecture, ongoing operations, and security, shall also be the responsibility of the University's 957 Internal Audit Department and the Auditor of Public Accounts. 958 959 EXHIBIT D 960 961 MANAGEMENT AGREEMENT 962 BETWEEN 963 THE COMMONWEALTH OF VIRGINIA 964 AND VIRGINIA POLYTECHNIC INSTITUTE 965 966 AND STATE UNIVERSITY 967 PURSUANT TO 968 THE RESTRUCTURED HIGHER EDUCATION 969 FINANCIAL AND ADMINISTRATIVE OPERATIONS 970 ACT OF 2005 971

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972	POLICY GOVERNING
973	THE PROCUREMENT OF GOODS, SERVICES,
974	INSURANCE, AND CONSTRUCTION AND
975	THE DISPOSITION OF SURPLUS MATERIALS
976 077	
977 978	THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
978 979	AND STATE UNIVERSITY POLICY GOVERNING THE PROCUREMENT OF
980	GOODS, SERVICES, INSURANCE AND CONSTRUCTION
981	AND THE DISPOSITION OF SURPLUS MATERIALS
982	I. PREAMBLE.
983	A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act
984	(the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that Virginia
985	Polytechnic Institute and State University, upon becoming a Covered Institution, shall be authorized to
986	establish its own system for the procurement of goods, services, insurance, and construction, and for the
987	independent disposition of surplus materials by public or private transaction.
988	B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of
989	Visitors for the procurement of goods, services, insurance, and construction, and the disposition of
990	surplus materials. The provisions of this Policy set forth below, together with the Rules Governing
991 002	Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1,
992 993	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.
993 994	C. This Policy is intended to cover the authority that may be granted to the University pursuant to
995	Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any
996	other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and
997	the University's Enabling Legislation are not affected by this Policy.
998	II. DEFINITIONS.
999	As used in this Policy, the following terms shall have the following meanings, unless the context
1000	requires otherwise:
1001	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
1002	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
1003	"Agreement" means "Management Agreement."
1004 1005	"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and State University.
1005	"Covered Institution" means, on and after the Effective Date of its initial Management Agreement
1007	with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that
1008	has entered into a Management Agreement with the Commonwealth to be governed by the provisions of
1009	Subchapter 3 of the Act.
1010	"Effective Date" means the effective date of the Management Agreement.
1011	"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
1012	Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
1013	missions of the individual public institutions of higher education of the Commonwealth.
1014 1015	"Goods" means all material, equipment, supplies, and printing, including information technology and
1015	telecommunications goods such as automated data processing hardware and software. "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Code
1010	of Virginia, between the Commonwealth of Virginia and Virginia Polytechnic Institute and State
1018	University. "Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and
1019	Construction" attached to this Policy as Attachment 1.
1020	"Services" as used in this Policy means any work performed by an independent contractor wherein
1021	the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of
1022	equipment, materials and supplies, and shall include both professional services, which include the
1023	practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and
1024	nonprofessional services, which include any service not specifically identified as professional services.
1025	"Surplus materials" means personal property including, but not limited to, materials, supplies,
1026 1027	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
1027	Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station
1020	Division (State Agency 200) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229).
1030	III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
1031	The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
1032	proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation

1033 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 1034 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 1035 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 1036 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 1037 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 1038 and procedures. 1039

IV. GENERAL PROVISIONS.

1040 A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement 1041 Policies.

1042 The University has had decentralization and pilot program autonomy in many procurement functions 1043 and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore 1044 1045 is adopted by the Board of Visitors to enable the University to develop a procurement system, as well as a surplus materials disposition system for the University as a whole. Any University electronic 1046 procurement system shall integrate or interface with the Commonwealth's electronic procurement system. 1047

1048 This Policy shall be effective on the Effective Date of the University's initial Management Agreement 1049 with the Commonwealth. The implementing policies and procedures adopted by the President, acting 1050 through the Executive Vice President and Chief Operating Officer or his designee, to implement this 1051 Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting 1052 procurements at the University, including policies regarding the nature and amounts of procurements 1053 that may be undertaken without the approval of the Board of Visitors, or of the President, acting through the Executive Vice President and Chief Operating Officer. 1054 1055

B. Scope and Purpose of University Procurement Policies.

1056 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be 1057 the policy of the University that procurements conducted by the University result in the purchase of high 1058 quality goods and services at reasonable prices, and that the University be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the University to 1059 1060 do business in a competitive environment. This Policy, together with the Rules Governing Procurement 1061 of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to 1062 all procurements undertaken by the University, regardless of the source of funds.

1063 C. Collaboration, Communication, and Cooperation with the Commonwealth.

1064 The University is committed to developing, maintaining, and sustaining collaboration, 1065 communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, 1066 particularly with the Offices of the Secretaries of Administration and Technology, the Department of 1067 General Services, and the Virginia Information Technologies Agency. Identifying business objectives and 1068 goals common to both the University and the Commonwealth and the mechanisms by which such 1069 objectives and goals may be jointly pursued and achieved are among the desired outcomes of such 1070 collaboration, communication, and cooperation. 1071

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

1072 The University is committed to maximizing its internal operational efficiencies, economies of scale 1073 among institutions of higher education, and the leveraged buying power of the Commonwealth as a 1074 whole.

Consistent with this commitment, the University:

1076 i) May purchase from and participate in all statewide contracts for goods and services, including 1077 information technology goods and services, except that the University shall purchase from and 1078 participate in contracts for communications services and telecommunications facilities entered into by 1079 the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an 1080 exception is provided in the Appropriation Act or by other law, and provided that orders not placed 1081 through statewide contracts shall be processed directly or by integration or interface through the 1082 *Commonwealth's electronic procurement system;*

ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement 1083 1084 system and comply with the business plan for the Commonwealth's electronic procurement system, as 1085 modified by an agreement between the Commonwealth and the University, which agreement shall not be 1086 substantially different than the agreement attached to this Policy as Attachment 2; and

1087 iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is 1088 consistent with the Commonwealth's SWAM program. 1089

E. Implementation.

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1090 To effect its implementation under the Act, and if the University remains in continued substantial 1091 compliance with the terms and conditions of this Management Agreement with the Commonwealth 1092 pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials 1093

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1094 shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2, except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et. seq.) of Title 2.2, and the Information Technology 1095 1096 1097 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 1098 1099 recycling of surplus materials in §§ 2.2-1124 and 2.2-1125; the requirement to purchase from the 1100 Department for the Blind and Vision Impaired (VIB) (§ 2.2-1117); and any other state statutes, rules, 1101 regulations or requirements relating to the procurement of goods, services, insurance, and construction, 1102 including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the 1103 duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department 1104 of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review 1105 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 1106 professional services (§ 2.2-1132). 1107

- V. UNIVERSITY PROCUREMENT POLICIES. 1108
- A. General Competitive Principles. 1109

1110 In connection with University procurements and the processes leading to award of contracts for 1111 goods, services, insurance, and construction, the University is committed to:

1112 1. Seeking competition to the maximum practical degree, taking into account the size of the 1113 anticipated procurement, the term of the resulting contract and the likely extent of competition;

1114 2. Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety 1115 or the appearance of any impropriety; 1116

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

1117 4. Providing access to the University's business to all qualified vendors, firms and contractors, with 1118 no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to 1119 engage in cooperative procurements and to meet special needs of the University;

1120 5. Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular 1121 vendor; and

1122 6. Providing for the free exchange of information between the University, vendors, firms or 1123 contractors concerning the goods or services sought and offered while preserving the confidentiality of 1124 proprietary information.

1125 B. Access to Records.

1126 Procurement records shall be available to citizens or to interested persons, firms or corporations in 1127 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et 1128 seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to 1129 § 2.2-3705.1 (7), 2.2-3705.1 (12), or 2.2-3705.4 (4), or other applicable exemptions of the Virginia 1130 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act. 1131

C. Cooperative Procurements and Alliances.

1132 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 1133 1134 provide goods and services to the University that meet its business goals and objectives, the University 1135 is authorized to participate in cooperative procurements with other public or private organizations or 1136 entities, including other educational institutions, public-private partnerships, public bodies, charitable 1137 organizations, health care provider alliances and purchasing organizations, so long as the resulting 1138 contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing 1139 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment $\overline{1}$ 1140 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative 1141 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, 1142 1143 Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by 1144 other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, 1145 use of cooperative contracts shall conform to the business requirements of the Commonwealth's 1146 electronic procurement system, including the requirement for payment of applicable fees. By October 1 1147 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, 1148 shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit 1149 and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and 1150 alliances entered into or used during the prior fiscal year.

1151 D. Training; Ethics in Contracting.

1152 The President, acting through the Executive Vice President and Chief Operating Officer, shall take 1153 all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged 1154 in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of

1155 the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement 1156 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only 1157 officials authorized by this Policy and any procedures adopted by the President, acting through the 1158 Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and 1159 engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.

1160 The University shall maintain an ongoing program to provide professional development opportunities 1161 to its buying staff and to provide methods training to internal staff who are engaged in placing 1162 decentralized small purchase transactions.

1163 E. Ethics and University Procurements.

1164 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 1165 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 1166 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 1167 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et 1168 seq.) of Chapter 12 of Title 18.2 of the Code of Virginia. 1169 1170

VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

1171 The policy and procedures for disposal for surplus materials shall provide for the sale, 1172 environmentally-appropriate disposal, or recycling of surplus materials by the University and the 1173 retention of the resulting proceeds by the University.

1174 VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND 1175 PROCEDURES.

1176 A. The President, acting through the Executive Vice President and Chief Operating Officer or his 1177 designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures 1178 for the University, which, in addition to the Rules, implement applicable provisions of law and this 1179 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 1180 1181 procedures (i) shall include the delegation of procurement authority by the Board to appropriate 1182 University officials who shall oversee University procurements of goods, services, insurance, and 1183 construction, including a grant of authority to such officials to engage in further delegation of authority 1184 as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set 1185 forth in Part V above.

1186 B. Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules 1187 shall become effective on the Effective Date of the University's initial Management Agreement with the 1188 Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the 1189 University on behalf of the University for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the University shall not affect existing 1190 1191 contracts already in effect.

1192 C. The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of 1193 1194 1195 Higher Education and their Vendors in their form as of the effective date of this Policy and as amended 1196 or changed in the future, and with University procedures specific to the Acquisition of Goods and 1197 Services. The Rules and University implementing policies and procedures shall implement a system of 1198 competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including 1199 professional services as defined in the Rules, insurance, and construction.

VIII. REOUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

A. Protests, Appeals and Debarment.

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1202 The Rules and University implementing policies and procedures for procurements other than capital 1203 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 1204 1205 non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are 1206 filed within the times specified by the Rules. Remedies available shall be limited to reversal of the 1207 action challenged or, where a contract already being performed is declared void, compensation for the 1208 cost of performance up to the time of such declaration. The Rules and University implementing policies 1209 and procedures also may establish the basis and process for debarment of any vendor, firm or 1210 contractor.

B. Prompt Payment of Contractors and Subcontractors.

The Rules and University implementing policies and procedures shall include provisions related to 1212 1213 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 1214 lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The 1215

payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or 1216 1217 the date established by the contract. All contracts also shall require prompt payment of subcontractors 1218 by the general contractor, upon receipt of payment by the University.

1219 C. Types of Procurements.

1220 The Rules and University implementing policies and procedures shall implement a system of 1221 competitive negotiation for professional services, as defined in the Rules, and shall implement 1222 purchasing procedures developed to maximize competition given the size and duration of the contract, 1223 and the needs of the University. Such policies and procedures may include special provisions for 1224 procurements such as emergency procurements, sole source procurements, brand name procurements, 1225 small purchases, procurements in which only one qualified vendor responds, and others.

1226 D. Approval and Public Notice of Procurements.

1227 The Rules and University implementing policies and procedures shall provide for approval of 1228 solicitation documents by an authorized individual and for reasonable public notice of procurements, 1229 given the size and nature of the need and the applicability of any Virginia Freedom of Information Act 1230 exemption. 1231

E. Administration of Contracts.

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1232 The Rules and University implementing policies and procedures shall contain provisions related to 1233 the administration of contracts, including contract claims, modifications, extensions and assignments. 1234 F. Non-Discrimination.

1235 The Rules and University implementing policies and procedures shall provide for a 1236 nondiscriminatory procurement process that prohibits discrimination because of race, religion, color, sex 1237 or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include 1238 appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned 1239 and small businesses and to promote and encourage a diversity of suppliers. 1240

ATTACHMENT 1

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

Governed by Subchapter 3 of the

Restructured Higher Education Financial and Administrative Operations Act,

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

1248 In accordance with the provisions of the Restructured Higher Education Financial and 1249 Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of 1250 Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher 1251 education of the Commonwealth of Virginia that has entered into a Management Agreement with the 1252 Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing 1253 Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, 1254 services, insurance, and construction by the Institution, excluding the University of Virginia Medical 1255 Center:

1256 § 1. Purpose. - The purpose of these Rules is to enunciate the public policies pertaining to 1257 procurement of good, services, insurance, and construction by the Institution from nongovernmental 1258 sources, to include governmental procurement that may or may not result in monetary consideration for 1259 either party. These Rules shall apply whether the consideration is monetary or nonmonetary and 1260 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 1261 1262 substantial compliance with the terms and conditions of its Management Agreement with the 1263 Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the 1264 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 1265 1266 1267 authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.

1268 § 3. Competition is the Priority. - To the end that the Institution shall obtain high quality goods and 1269 services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial 1270 manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have 1271 access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the 1272 intent of the governing body of the Institution that competition be sought to the maximum feasible 1273 degree, that procurement procedures involve openness and administrative efficiency, that individual 1274 public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing 1275 contract awards be made clear in advance of the competition, that specifications reflect the procurement 1276 needs of the purchasing body rather than being drawn to favor a particular vendor, and that the

1277 purchaser and vendor freely exchange information concerning what is sought to be procured and what 1278 is offered. The Institution may consider best value concepts when procuring goods and nonprofessional 1279 services, but not construction or professional services. Professional services will be procured using a 1280 qualification-based selection process. The criteria, factors, and basis for consideration of best value and 1281 the process for the consideration of best value shall be as stated in the procurement solicitation. 1282

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

1283 "Affiliate" means an individual or business that controls, is controlled by, or is under common 1284 control with another individual or business. A person controls an entity if the person owns, directly or 1285 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition 1286 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 1287 members of the board of directors or similar governing body of the business or (ii) is convertible into, 1288 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 1289 partnership interest shall be deemed to be a voting security.

1290 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 1291 and various elements of required services that in total are optimal relative to the Institution's needs.

1292 "Business" means any type of corporation, partnership, limited liability company, association, or sole 1293 proprietorship operated for profit. 1294

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

1295 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 1296 procured, specifying the factors that will be used in evaluating the proposal and containing or 1297 incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. 1298

1299 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 1300 proposals by publication in a newspaper or newspapers of general circulation in the area in which the 1301 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 1302 can be reasonably anticipated to submit proposals in response to the particular request. Public notice 1303 also shall be published on the Department of General Services' central electronic procurement website 1304 and may be published on other appropriate websites. In addition, proposals may be solicited directly 1305 from potential contractors.

1306 3. a. Procurement of professional services. The procurement of professional services for capital 1307 projects shall be conducted using a qualification-based selection process. The Institution shall engage in 1308 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 1309 basis of initial responses and with emphasis on professional competence, to provide the required 1310 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 1311 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed 1312 project, as well as alternative concepts. The Request for Proposal shall not, however, request that 1313 offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may 1314 discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and 1315 where appropriate, nonbinding estimates of price for services. Proprietary information from competing 1316 offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined 1317 in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all 1318 information developed in the selection process to this point, the Institution shall select in the order of 1319 preference two or more offerors whose professional qualifications and proposed services are deemed 1320 most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a 1321 contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair 1322 and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked 1323 first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on 1324 until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine 1325 in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly 1326 more highly qualified and suitable than the others under consideration, a contract may be negotiated 1327 and awarded to that offeror.

1328 A contract for architectural or professional engineering services relating to construction projects may 1329 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience 1330 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 1331 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 1332 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the 1333 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 1334 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 1335 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 1336 Request for Proposal stated the potential for a multi-vendor award.

1337 Multiphase professional services contracts satisfactory and advantageous to the Institution for

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1338 environmental, location, design and inspection work regarding construction of infrastructure projects 1339 may be negotiated and awarded based on qualifications at a fair and reasonable price for the first 1340 phase only, when completion of the earlier phases is necessary to provide information critical to the 1341 negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such 1342 contract, the Institution shall state the anticipated intended total scope of the project and determine in 1343 writing that the nature of the work is such that the best interests of such Institution require awarding 1344 the contract.

1345 b. Procurement of other than professional services. Selection shall be made of two or more offerors 1346 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 1347 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 1348 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, 1349 but need not be the sole determining factor. After negotiations have been conducted with each offeror so 1350 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 1351 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 1352 1353 Institution determine in writing and in its sole discretion that only one offeror has made the best 1354 proposal, a contract may be negotiated and awarded to that offeror.

1355 "Competitive sealed bidding" is a method of contractor selection, other than for professional 1356 services, which includes the following elements:

1357 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 1358 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided 1359 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 1360 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 1361 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of 1362 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been 1363 qualified under the criteria set forth in the first solicitation.

1364 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 1365 publication on the Department of General Services' central electronic procurement website. Public 1366 notice also may be published in a newspaper of general circulation or on other appropriate websites, or 1367 both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations 1368 shall include businesses selected from a list made available by the Department of Minority Business 1369 Enterprise. 1370

3. Public opening and announcement of all bids received.

1371 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 1372 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 1373 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, 1374 which are helpful in determining acceptability.

1375 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple 1376 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

1377 "Construction" means building, altering, repairing, improving or demolishing any structure, building 1378 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

1379 "Construction management contract" means a contract in which a party is retained by the owner to 1380 coordinate and administer contracts for construction services for the benefit of the owner, and may also 1381 include, if provided in the contract, the furnishing of construction services to the owner.

1382 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 1383 agreement with the Commonwealth of Virginia, a public institution of higher education of the 1384 Commonwealth that has entered into a management agreement with the Commonwealth to be governed 1385 by the provisions of Subchapter 3 of the Restructuring Act. "Design-build contract" means a contract 1386 between the Institution and another party in which the party contracting with the Institution agrees to 1387 both design and build the structure, roadway or other item specified in the contract.

1388 "Goods" means all material, equipment, supplies, and printing, including information technology and 1389 telecommunications goods such as automated data processing hardware and software. "Informality" 1390 means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to 1391 Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule 1392 for the goods, services or construction being procured. "Multiphase professional services contract" 1393 means a contract for the providing of professional services where the total scope of work of the second 1394 or subsequent phase of the contract cannot be specified without the results of the first or prior phase of 1395 the contract.

1396 "Nonprofessional services" means any services not specifically identified as professional services in 1397 the definition of professional services and includes small construction projects valued not over \$1million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall 1398

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

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

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

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

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

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

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

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

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

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

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

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

§ 5. Methods of procurement. -

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

1439 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 1440 shall be used for design services. 1441

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

1442 D. Construction may be procured only by competitive sealed bidding, except that competitive 1443 negotiation may be used in the following instances upon a determination made in advance by the 1444 Institution and set forth in writing that competitive sealed bidding is either not practicable or not 1445 fiscally advantageous to the public, which writing shall document the basis for this determination: 1446

1. By the Institution on a fixed price design-build basis or construction management basis under § 7; 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings;

1447 1448 3. By the Institution for the construction of highways and any draining, dredging, excavation, 1449 grading or similar work upon real property; or

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

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1460 procurement system and may be published on other appropriate websites.

1461 F. In case of emergency, a contract may be awarded without competitive sealed bidding or 1462 competitive negotiation; however, such procurement shall be made with such competition as is 1463 practicable under the circumstances. A written determination of the basis for the emergency and for the 1464 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 1465 written notice stating that the contract is being awarded on an emergency basis, and identifying that 1466 which is being procured, the contractor selected, and the date on which the contract was or will be 1467 awarded. This notice shall be posted in a designated public area, which may be the Department of 1468 General Services' website for the Commonwealth's central electronic procurement system, or published 1469 in a newspaper of general circulation on the day the Institution awards or announces its decision to 1470 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may 1471 also be published on the Department of General Services' website for the Commonwealth's central 1472 electronic procurement system and other appropriate websites.

1473 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 1474 sealed bids or competitive negotiation for single or term contracts for goods and services other than 1475 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; 1476 however, such small purchase procedures shall provide for competition wherever practicable.

1477 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 1478 negotiation for single or term contracts for professional services if the aggregate or the sum of all 1479 phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for 1480 competition wherever practicable.

1481 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase 1482 of goods, products or commodities from a public auction sale is in the best interests of the public, such 1483 items may be purchased at the auction, including online public auctions. The writing shall document the 1484 basis for this determination.

1485 J. The purchase of goods or nonprofessional services, but not construction or professional services, 1486 may be made by reverse auctioning. 1487

§ 6. Cooperative procurement.

1488 A. In circumstances where the Institution determines and documents that statewide contracts for 1489 goods and services, including information technology and telecommunications goods and services, do 1490 not provide goods and services to the Institution that meet its business goals and objectives, the 1491 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement 1492 arrangement on behalf of or in conjunction with public bodies, public or private health or educational 1493 institutions, other public or private organizations or entities, including public-private partnerships, 1494 charitable organizations, health care provider alliances or purchasing organizations or entities, or with 1495 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 1496 1497 savings or reduce administrative expense in any acquisition of goods and services, other than 1498 professional services. The Institution may purchase from any authority, department, agency, institution, 1499 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not 1500 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to 1501 bid specified that the procurement was being conducted on behalf of other public bodies. In such 1502 instances, deviation from the procurement procedures set forth in these Rules and the administrative 1503 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of 1504 the above, use of cooperative contracts shall conform to the business requirements of the 1505 Commonwealth's electronic procurement system, including the requirement for payment of applicable 1506 fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that 1507 will allow for participation in any such arrangement.

1508 B. In circumstances where statewide contracts for goods and services, including information 1509 technology and telecommunications goods and services, do not provide goods and services to meet the 1510 Institution's business goals and objectives, and as authorized by the United States Congress and 1511 consistent with applicable federal regulations, and provided the terms of the contract permit such 1512 purchases:

1513 1. The Institution may purchase goods and nonprofessional services, from a United States General 1514 Services Administration contract or a contract awarded by any other agency of the United States 1515 government; and

2. The Institution may purchase telecommunications and information technology goods and 1516 1517 nonprofessional services from a United States General Services Administration contract or a contract 1518 awarded by any other agency of the United States government.

1519 § 7. Design-build or construction management contracts authorized. -

1520 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed

1521 price design-build basis or construction management basis in accordance with the provisions of this 1522 section.

1523 B. Procurement of construction by the design-build or construction management method shall be a 1524 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 1525 qualifications. Based upon the information submitted and any other relevant information which the 1526 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 1527 selected by the Commonwealth and requested to submit proposals. 1528

§ 8. Modification of the contract. -

1529 A. A contract awarded by the Institution may include provisions for modification of the contract 1530 during performance, but no fixed-price contract may be increased by more than 25% of the amount of 1531 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's 1532 president or his designee. In no event may the amount of any contract, without adequate consideration, 1533 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 1534 an error in its bid or offer.

1535 B. The Institution may extend the term of an existing contract for services to allow completion of any 1536 work undertaken but not completed during the original term of the contract.

1537 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 1538 modifications. 1539

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

1540 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 1541 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis 1542 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 1543 Institution shall include businesses selected from a list made available by the Department of Minority 1544 Business Enterprise.

1545 B. The Institution shall establish programs consistent with this section to facilitate the participation 1546 of small businesses and businesses owned by women and minorities in procurement transactions. The 1547 programs established shall be in writing and shall include cooperation with the Department of Minority 1548 Business Enterprise, the United States Small Business Administration, and other public or private 1549 agencies. The Institution shall submit annual progress reports on minority business procurement to the 1550 Department of Minority Business Enterprise.

1551 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 1552 analysis that documents a statistically significant disparity between the availability and utilization of 1553 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 1554 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 1555 law.

1556 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 1557 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 1558 that employing ex-offenders on the specific contract is not in its best interest.

1559 § 10. Employment discrimination by contractor prohibited; required contract provisions. - The 1560 Institution shall include in every contract of more than \$10,000 the following provisions: 1561

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

1562 a. The contractor will not discriminate against any employee or applicant for employment because of 1563 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 1564 1565 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous 1566 places, available to employees and applicants for employment, notices setting forth the provisions of this 1567 nondiscrimination clause.

1568 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 1569 contractor, will state that such contractor is an equal opportunity employer.

1570 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 1571 shall be deemed sufficient for the purpose of meeting the requirements of this section.

1572 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every 1573 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 1574 subcontractor or vendor. 1575

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

1576 The Institution shall include in every contract over \$10,000 the following provisions: During the 1577 performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the 1578 contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 1579 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 1580 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 1581

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

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

1591 § 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a
1592 certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or
1593 manufacturer named and shall be deemed to convey the general style, type, character, and quality of the
1594 article desired. Any article that the Institution in its sole discretion determines to be the equal of that
1595 specified, considering quality, workmanship, economy of operation, and suitability for the purpose
1596 intended, shall be accepted.

1597 § 13. Comments concerning specifications. - The Institution shall establish procedures whereby
1598 comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal
1599 can be received and considered prior to the time set for receipt of bids or proposals or award of the
1600 contract.

1601 § 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.

1606 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
1608 shall be consistent with the provisions of this section.

1609The application form used in such process shall set forth the criteria upon which the qualifications1610of prospective contractors will be evaluated. The application form shall request of prospective1611contractors only such information as is appropriate for an objective evaluation of all prospective1612contractors pursuant to such criteria. The form shall allow the prospective contractor seeking1613prequalification to request, by checking the appropriate box, that all information voluntarily submitted1614by the contractor pursuant to this subsection shall be considered a trade secret or proprietary1615information subject to the provisions of subsection D of § 34 of these Rules.

1616 In all instances in which the Institution requires prequalification of potential contractors for
1617 construction projects, advance notice shall be given of the deadline for the submission of
1618 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set
1619 for the submission of bids for such construction so as to allow the procedures set forth in this
1620 subsection to be accomplished.

1621At least 30 days prior to the date established for submission of bids or proposals under the1622procurement of the contract for which the prequalification applies, the Institution shall advise in writing1623each contractor who submitted an application whether that contractor has been prequalified. In the1624event that a contractor is denied prequalification, the written notification to the contractor shall state1625the reasons for the denial of prequalification and the factual basis of such reasons.

1626 A decision by the Institution denying prequalification under the provisions of this subsection shall be **1627** final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

1628 *C.* The Institution may deny prequalification to any contractor only if the Institution finds one of the following:

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

1637 3. The contractor or any officer, director or owner thereof has had judgments entered against him
1638 within the past 10 years for the breach of contracts for governmental or nongovernmental construction,
1639 including, but not limited to, design-build or construction management;

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4. The contractor has been in substantial noncompliance with the terms and conditions of prior
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a contractor in any prior construction contracts, the Institution may deny prequalification if the

1643 contractor has been in substantial noncompliance with the terms and conditions of comparable 1644 construction contracts with another public body without good cause.

1645 The Institution may not utilize this provision to deny prequalification unless the facts underlying such 1646 substantial noncompliance were documented in writing in the prior construction project file and such 1647 information relating thereto given to the contractor at that time, with the opportunity to respond;

1648 5. The contractor or any officer, director, owner, project manager, procurement manager or chief 1649 financial official thereof has been convicted within the past 10 years of a crime related to governmental 1650 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 1651 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental 1652 Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state; 1653

1654 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an 1655 established debarment procedure from bidding or contracting by any public body, agency of another 1656 state or agency of the federal government; and

1657 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. 1658

1659 § 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid 1660 from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest 1661 responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to 1662 obtain a contract price within available funds. However, the negotiation may be undertaken only under 1663 conditions and procedures described in writing and approved by the Institution prior to issuance of the 1664 Invitation to Bid and summarized therein. 1665

§ 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 1666 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 1667 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 1668 1669 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 1670 particular responsive and responsible bidder or offeror. 1671

B. The Institution may waive informalities in bids.

1672 § 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no 1673 insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus 1674 lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to 1675 the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall 1676 preclude the Institution from debarring a prospective insurer pursuant to § 18.

1677 § 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of 1678 supplies, services, insurance or construction, for specified periods of time. Any debarment procedure 1679 shall be established in writing by the Institution. Any debarment procedure may provide for debarment 1680 on the basis of a contractor's unsatisfactory performance for the Institution. 1681

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

1682 A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 1683 1684 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

1685 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets 1686 Development Council, shall advise the Institution concerning the designation of recycled goods. 1687

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

1688 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 1689 1690 decided by lot.

1691 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 1692 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 1693 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 1694 1695 goods are being offered, and existing price preferences have already been taken into account, preference 1696 shall be given to the bidder whose goods contain the greatest amount of recycled content.

1697 § 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract 1698 for coal to be purchased for use in the Institution with state funds, the Institution shall procure using 1699 competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering 1700 coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the 1701 low responsive and responsible bidder offering coal mined elsewhere.

1702 § 22. Preference for recycled paper and paper products used by the Institution. -

1703 A. In determining the award of any contract for paper and paper products to be purchased for use

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1704 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable 1705 for the purpose intended, so long as the price is not more than 10% greater than the price of the low 1706 responsive and responsible bidder or offeror offering a product that does not qualify under subsection 1707 R

1708 B. For purposes of this section, recycled paper and paper products means any paper or paper

1709 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

1710 § 23. Withdrawal of bid due to error. -

1711 A. A bidder for a public construction contract, other than a contract for construction or maintenance 1712 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 1713 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 1714 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 1715 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material 1716 made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission 1717 can be clearly shown by objective evidence drawn from inspection of original work papers, documents 1718 and materials used in the preparation of the bid sought to be withdrawn.

1719 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from 1720 consideration if the price bid would have been substantially lower than the other bids due solely to the 1721 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 1722 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 1723 objective evidence drawn from inspection of original work papers, documents and materials used in the 1724 preparation of the bid sought to be withdrawn.

1725 One of the following procedures for withdrawal of a bid shall be selected by the Institution and 1726 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 1727 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 1728 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or 1729 designated official his original work papers, documents and materials used in the preparation of the bid 1730 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 1731 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 1732 instance, the work papers, documents and materials may be considered as trade secrets or proprietary 1733 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 1734 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 1735 shall have two hours after the opening of bids within which to claim in writing any mistake as defined 1736 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 1737 period has elapsed. The mistake shall be proved only from the original work papers, documents and 1738 materials delivered as required herein.

1739 B. The Institution may establish procedures for the withdrawal of bids for other than construction 1740 contracts.

1741 C. No bid shall be withdrawn under this section when the result would be the awarding of the 1742 contract on another bid of the same bidder or of another bidder in which the ownership of the 1743 withdrawing bidder is more than 5%.

1744 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed 1745 to be the low bid.

1746 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or 1747 labor to or perform any subcontract or other work agreement for the person or firm to whom the 1748 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for 1749 which the withdrawn bid was submitted.

1750 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 1751 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the 1752 bid price, provided such bidder is a responsible and responsive bidder. 1753

§ 24. Contract Pricing Arrangements.

1754 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 1755 basis that is not prohibited by these Rules.

1756 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall 1757 be awarded on the basis of cost plus a percentage of cost.

1758 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis 1759 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in 1760 whole or part as a percentage of such claims, shall not be prohibited by this section.

1761 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

1762 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 1763 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the code of 1764

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

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

1770 C. No subcontractor shall perform any work on a construction project of the Institution unless he 1771 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage 1772 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 1773 Virginia. 1774

§ 26. Retainage on construction contracts. -

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

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

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

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

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

1790 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the 1791 contractor, or its subcontractors, agents or employees: 1792

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

3. Provides for liquidated damages for delay; or

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

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

1801 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 1802 the contractor in the performance of work under any public construction contract for the Institution, it 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 1803 1804 1805 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 1806 determined through litigation or arbitration to have been made in bad faith. 1807

§ 28. Bid bonds. -

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

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

1815 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 1816 or proposals for construction contracts anticipated to be less than \$1 million. 1817

§ 29. Performance and payment bonds. -

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

1823 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 1824 conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in 1825

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1826 a form and amount satisfactory to the Institution.

1827 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of 1828 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom 1829 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the 1830 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor 1831 supplied or performed in the furtherance of the work.

1832 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but 1833 only for periods when the equipment rented is actually used at the site.

1834 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 1835 that are authorized to do business in Virginia.

1836 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

1837 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

1838 E. Nothing in this section shall preclude the Institution from requiring payment or performance 1839 bonds for construction contracts below \$1 million.

1840 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish 1841 a payment bond with surety thereon in the sum of the full amount of the contract with such 1842 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are 1843 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the 1844 work provided for in the subcontract.

1845 § 30. Alternative forms of security. -

1846 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 1847 escrow in the face amount required for the bond.

1848 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the 1849 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 1850 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 1851 be granted only upon a determination that the alternative form of security proffered affords protection 1852 to the Institution equivalent to a corporate surety's bond.

1853 § 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or 1854 performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for 1855 Proposal.

1856 § 32. Action on performance bond. - No action against the surety on a performance bond shall be 1857 brought by the Institution unless brought within one year after (i) completion of the contract, including 1858 the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty 1859 that gave rise to the action. 1860

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

1861 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 1862 material in accordance with the contract documents in furtherance of the work provided in any contract 1863 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 1864 days after the day on which the claimant performed the last of the labor or furnished the last of the 1865 materials for which he claims payment, may bring an action on the payment bond to recover any 1866 amount due him for the labor or material. The obligee named in the bond need not be named a party to 1867 the action.

1868 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 1869 contractual relationship, express or implied, with the contractor, may bring an action on the 1870 contractor's payment bond only if he has given written notice to the contractor within 180 days from the 1871 day on which the claimant performed the last of the labor or furnished the last of the materials for 1872 which he claims payment, stating with substantial accuracy the amount claimed and the name of the 1873 person for whom the work was performed or to whom the material was furnished. Notice to the 1874 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to 1875 such contractor at any place where his office is regularly maintained for the transaction of business. 1876 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not 1877 be subject to the time limitations stated in this subsection.

1878 C. Any action on a payment bond shall be brought within one year after the day on which the 1879 person bringing such action last performed labor or last furnished or supplied materials.

1880 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 1881 it is in writing, signed by the person whose right is waived, and executed after such person has 1882 performed labor or furnished material in accordance with the contract documents.

1883 § 34. Public inspection of certain records. -

1884 A. Except as provided in this section, all proceedings, records, contracts and other public records 1885 relating to procurement transactions shall be open to the inspection of any citizen, or any interested 1886 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et

1887 seq.).

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

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

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

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

1901 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in 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 1902 1903 1904 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to 1905 or upon submission of the data or other materials, (ii) identify the data or other materials to be 1906 protected, and (iii) state the reasons why protection is necessary.

1907 § 35. Exemption for certain transactions. -1908

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

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

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

1915 3. Procurement of any construction or planning and design services for construction by the 1916 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is 1917 obligated to conform to procurement procedures that are established by federal statutes or regulations, 1918 whether or not those federal procedures are in conformance with the provisions of these Rules. 1919

4. The University of Virginia Medical Center.

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

1922 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 1923 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such 1924 1925 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 1926 of the Institution's President or his designee that acceptance of the grant or contract funds under the 1927 applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract. 1928 1929

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

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

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

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

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

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

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1948 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 1949 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as 1950 other organizations that contract with public bodies to account for the use of the funds provided; 1951 however, if the faith-based organization segregates public funds into separate accounts, only the 1952 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. 1953

1954 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 1955 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent 1956 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to 1957 expenditures pursuant to contracts, if any, for the services of chaplains.

1958 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization 1959 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of 1960 1961 a particular religion.

1962 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 1963 to a contract between the Institution and a faith-based organization, objects to the religious character of 1964 the faith-based organization from which the individual receives or would receive the goods, services, or 1965 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 1966 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

1967 The Institution shall provide to each individual who applies for or receives goods, services, or 1968 disbursements provided pursuant to a contract between the Institution and a faith-based organization a 1969 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based 1970 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 1971 charitable or religious character, practices, or expression. No provider of services may discriminate 1972 against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may 1973 1974 request assignment to a different provider. If you believe that your rights have been violated, please 1975 discuss the complaint with your provider or notify the appropriate person as indicated in this form.'

1976 § 37. Exemptions from competition for certain transactions. -

1977 The Institution may enter into contracts without competition, as that term is described in subsections 1978 A through J of § 5 (Methods of procurement) of these Rules, for:

1979 1. The purchase of goods or services that are produced or performed by or related to:

1980 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 1981 Blind and Vision Impaired;

1982 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported 1983 *employment services serving the handicapped;* 1984

- c. Private educational institutions; or
- 1985 d. Other public educational institutions.
- 1986 2. Speakers and performing artists;
- 1987 3. Memberships and Association dues;

1988 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 1989 goods or services by the Institution;

- 1990 5. Group travel in foreign countries;
- 1991 6. Conference facilities and services;
- 1992 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, 1993 registration and tournament fees;
- 1994 8. Royalties; or

1995 9. The purchase of legal services, provided that the Office of the Attorney General has been 1996 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

1997 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain 1998 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility 1999 service without competitive sealed bidding or competitive negotiation if purchased through an 2000 association of which the Institution is a member if the association was formed and is maintained for the 2001 purpose of promoting the interest and welfare of and developing close relationships with similar public 2002 bodies, provided such association has procured the insurance or electric utility services by use of 2003 competitive principles and provided that the Institution has made a determination in advance after 2004 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive 2005 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this 2006 determination.

2007 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning: 2008 "Contractor" means the entity that has a direct contract with the Institution.

2009 "Debtor" means any individual, business, or group having a delinguent debt or account with any 2010 state agency that obligation has not been satisfied or set aside by court order or discharged in 2011 bankruptcy. 2012 "Payment date" means either (i) the date on which payment is due under the terms of a contract for 2013 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days 2014 after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods 2015 or services by the Institution.. 2016 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor 2017 to whom the contract was awarded or to any subcontractor in the performance of the work provided for 2018 in such contract. 2019 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission. 2020 2021 § 41. Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid. 2022 2023 § 42. Prompt payment of bills by the Institution. -2024 A. The Institution shall promptly pay for the completely delivered goods or services by the required 2025 payment date. 2026 Payment shall be deemed to have been made when offset proceedings have been instituted, as 2027 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia. 2028 B. Separate payment dates may be specified for contracts under which goods or services are 2029 provided in a series of partial deliveries or executions to the extent that such contract provides for 2030 separate payment for such partial delivery or execution. 2031 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where 2032 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by 2033 the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or 2034 2035 services. 2036 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made 2037 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these 2038 Rules. 2039 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall 2040 include: 2041 1. A payment clause that obligates the contractor to take one of the two following actions within 2042 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the 2043 subcontractor under that contract: 2044 a. Pay the subcontractor for the proportionate share of the total payment received from the 2045 Institution attributable to the work performed by the subcontractor under that contract; or 2046 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the 2047 subcontractor's payment with the reason for nonpayment. 2048 2. A payment clause that requires (i) individual contractors to provide their social security numbers 2049 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 2050 numbers. 2051 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts 2052 owed by the contractor that remain unpaid after seven days following receipt by the contractor of 2053 payment from the Institution for work performed by the subcontractor under that contract, except for 2054 amounts withheld as allowed in subdivision 1. 2055 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, 2056 interest shall accrue at the rate of 1% per month." Any such contract awarded shall further require the contractor to include in each of its subcontracts 2057 2058 a provision requiring each subcontractor to include or otherwise be subject to the same payment and 2059 interest requirements with respect to each lower-tier subcontractor. 2060 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract 2061 2062 modification shall not be made for the purpose of providing reimbursement for the interest charge. A 2063 cost reimbursement claim shall not include any amount for reimbursement for the interest charge. 2064 § 46. Interest penalty; exceptions. -2065 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the 2066 Institution to a vendor that remain unpaid after seven days following the payment date. However, 2067 nothing in this section shall affect any contract providing for a different rate of interest, or for the 2068 payment of interest in a different manner.

2069 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on

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2070 corporate loans (prime rate) at large United States money center commercial banks as reported daily in 2071 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of 2072 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 2073 interest established pursuant to § 58.1-1812 of the Code of Virginia.

2074 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 2075 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 2076 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 2077 exception from the interest penalty provided by this subsection shall apply only to that portion of a 2078 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 2079 the disagreement.

2080 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 2081 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 2082 contractor from receiving interest on such funds under an approved escrow agreement.

2083 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or 2084 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 2085 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the 2086 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 2087 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 2088 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven 2089 days following the payment date.

2090 § 47. Ineligibility. -

2091 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from 2092 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 2093 2094 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 2095 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 2096 requested by the bidder within five business days after receipt of the notice.

2097 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 2098 challenging the evaluation. The Institution shall issue its written determination of disqualification or 2099 ineligibility based on all information in the possession of the Institution, including any rebuttal 2100 information, within five business days of the date the Institution received such rebuttal information.

2101 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 2102 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 2103 evaluation reveals that the bidder should be refused permission to participate, or disqualified from 2104 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The 2105 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 2106 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 2107 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 2108 in § 54.

2109 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 2110 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility. 2111 2112

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

2113 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final 2114 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 2115 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 2116 instituting legal action as provided in § 54.

2117 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, 2118 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 2119 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released 2120 only upon a final determination that the bidder was entitled to withdraw the bid.

2121 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 2122 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 2123 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation 2124 to Bid, the sole relief shall be withdrawal of the bid.

2125 § 49. Determination of nonresponsibility. -

2126 A. Following public opening and announcement of bids received on an Invitation to Bid, the 2127 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed 2128 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent 2129 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 2130

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

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

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

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

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

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

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

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

2162 D. Nothing contained in this section shall be construed to require the Institution, when procuring by 2163 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 2164 to be the most advantageous. 2165

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

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

2188 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then 2189 the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise 2190 it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but 2191

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2192 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

2196 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.

2202 § 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the
2203 validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be
2204 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. -

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A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

2217 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 2218 Such procedure, which may be contained in the contract or may be specifically incorporated into the 2219 contract by reference and made available to the contractor, shall establish a time limit for a final 2220 decision in writing by the Institution. If the Institution has established administrative procedures meeting 2221 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically 2222 incorporated in the contract by reference and made available to the contractor. The Institution may 2223 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 2224 (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.

2233 § 54. Legal actions. -

2234 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from 2235 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 2236 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging 2237 that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an 2238 honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the 2239 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, 2240 2241 2242 having been previously determined by the Institution to be not responsible in accordance with § 4, is 2243 found by the court to be a responsible bidder, the court may direct the Institution to award the contract 2244 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.

2250 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a
2251 sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award
2252 or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit

2253 court challenging a proposed award or the award of a contract, which shall be reversed only if the 2254 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, 2255 but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable 2256 state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

2257 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 2258 of reasonable security to protect the Institution.

2259 E. A contractor may bring an action involving a contract dispute with the Institution in the 2260 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be 2261 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of 2262 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of 2263 Accounts.

2264 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of 2265 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or 2266 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same 2267 procurement transaction unless the Institution agrees otherwise.

2268 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a 2269 contractor. 2270

§ 55. Administrative appeals procedure. -

2271 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 2272 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 2273 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 2274 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 2275 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 2276 disinterested person or panel, the opportunity to present pertinent information and the issuance of a 2277 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 2278 2279 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so 2280 grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings 2281 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these 2282 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a 2283 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution 2284 *Council in establishing an Alternative Dispute Resolution (ADR) procedure.*

2285 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 2286 judicial review if such action is brought within 30 days of receipt of the written decision.

2287 § 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes 2288 arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and 2289 other alternative dispute resolution procedures. However, such procedures shall be nonbinding and 2290 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 2291 2292 2293 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia. 2294

ATTACHMENT 2

Memorandum of Agreement

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

ERP/SciQuest Implementation with eVA

The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute

2300 and State University (University) agree to the following:

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2301 I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system 2302 (Banner).

2303 II. Initially, all non-exempt orders produced by the ERP/SciQuest integration will be transmitted to 2304 eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. 2305 Longer term a more real-time option may be mutually agreed by the Department of General 2306 Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the 2307 ERP and eVA systems.

2308 III. The University may request that eVA contract vendors provide a version of their contract catalog 2309 for loading into ERP/SciOuest. Should the vendor indicate a preference to only provide its catalog 2310 through eVA, then the University will access these catalogs as described in item B8 of the Metrics 2311 section of this document. In any event, the University shall be responsible for payment of all eVA 2312 transaction fees for non-exempt orders to unregistered vendors and exempt orders the University 2313 chooses to issue to unregistered and registered vendors through eVA.

2314 IV. eVA will load all non-exempt University orders into the eVA Data Warehouse. For clarity, it is 2315 understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from 2316 mandatory processing through eVA.

2317 V. In lieu of processing individual orders for requirements through eVA, a more efficient 2318 administrative approach is to establish a blanket or standing order. The University is authorized to use 2319 such an approach where it makes good business sense. The University will ensure vendors understand 2320 that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the 2321 transaction fee will be based on the total order amount, and the vendor is required to pay the total 2322 transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule 2323 specified in the order.

2324 VI. eVA will deliver University non-exempt orders to vendors that are identified as accepting 2325 electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other 2326 orders to vendors. Whereas the University maintains a University specific electronic vendor record that 2327 identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA 2328 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the 2329 eVA Business Plan as follows:

2330 A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the 2331 appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that 2332 includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will pay 2333 the eVA transaction fees for these orders.

2334 B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the 2335 appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that 2336 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 2337 2338 2339 such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or 2340 CGI-AMS. 2341

The University further agrees that:

2342 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 2343 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed 2344 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

2345 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 2346 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

2347 3. In the event the University does not provide resolution notification to the eVA Business Manager 2348 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 2349 reversing disputed transaction fees from the vendor to the University and the University will pay the fee. 2350 VII. The University will not require separate vendor registrations as a prerequisite for responding to

2351 University solicitations. The University will participate in an enterprise workgroup to determine the best 2352 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 2353 information will be supported in eVA in such a way as to provide CoVA verified vendor information to 2354 entities. The University will have the option to receive a subset of vendor related data. Until an 2355 enterprise W-9 process is established, the University will be responsible for collection of W-9 2356 information.

2357 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at 2358 least six (6) months prior to change or as soon as any new plan is proposed) with the University 2359 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that 2360 may affect the technical changes described herein.

2361 IX. Integration of the University's electronic procurement solution with the University's ERP is the 2362 responsibility of the University. The solution must provide for orders, change orders and cancellations. 2363 Guidelines

2364 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for 2365 electronic procurement between the University and the CoVA.

2366 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 2367 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

2368 3. Non-exempt orders to un-registered vendors are to be transmitted to eVA for loading to the Data 2369 Warehouse. The University shall be responsible for payment of all eVA transaction fees for non-exempt 2370 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and 2371 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements 2372 for unregistered vendor orders.

2373 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA 2374 standard format.

2375 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

2376 6. eVA Interface standard does not currently support PCard orders; however these orders may be 2377 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor. 2378 Schedule

2379 The University shall implement this agreement no later than July 2006.

2380 **Metrics**

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2381 A. The University shall comply with the following Governor's eVA Management Objective:

2382 Ninety-five percent of all non-exempt orders to be processed by eVA. Includes non-exempt orders 2383 issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to 2384 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For 2385 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All non-exempt orders not processed by eVA shall be 2386 reported on the eVA Dashboard and the corresponding non-use fee paid by the University. 2387 2388

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;

2391 3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers 2392 electronically using eVA;

2393 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar 2394 value, that include commodity codes, complete item descriptions, quantities, and unit prices;

2395 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five 2396 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and 2397 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the 2398 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to 2399 monitor the usage of confirming orders with the objective of reducing their numbers to the extent 2400 possible.

2401 The University agrees that, for confirming orders, it will resolve any vendor dispute, including 2402 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such 2403 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or 2404 CGI-AMS. 2405

The University further agrees that:

2406 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 2407 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed 2408 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

2409 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 2410 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

2411 c. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 2412 2413 reversing disputed transaction fees from the vendor to the University and the University will pay the fee. 2414 6. Timely process electronic change orders and cancellations;

2415 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA web site except 2416 as specifically exempted by DPS:

2417 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to 2418 end users using the ERP/SciQuest Integration system. The University will be responsible for the 2419 accuracy of contract catalog pricing loaded into the ERP/SciOuest:

2420 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post 2421 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 2422 below);

2423 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate 2424 commodities, when such are identified;

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

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

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

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

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2430	EXHIBIT E
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2432	MANAGEMENT AGREEMENT
2433	BETWEEN
2434	THE COMMONWEALTH OF VIRGINIA
2435	AND

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2436	VIRGINIA POLYTECHNIC INSTITUTE
2437	AND STATE UNIVERSITY
2438	PURSUANT TO
2439	THE RESTRUCTURED HIGHER EDUCATION
2440	FINANCIAL AND ADMINISTRATIVE OPERATIONS
2441	ACT OF 2005
2442	ACT OF 2003
2442	POLICY GOVERNING
2443	
2444	HUMAN RESOURCES FOR PARTICIPATING COVERED EMPLOYEES
2445 2446	
	AND OTHER UNIVERSITY EMPLOYEES
2447	
2448	THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
2449	AND STATE UNIVERSITY
2450	POLICY GOVERNING HUMAN RESOURCES FOR
2451	PARTICIPATING COVERED EMPLOYEES
2452	AND OTHER UNIVERSITY EMPLOYEES
2453	I. PREAMBLE.
2454	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
2455	4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of
2456	higher education of the Commonwealth of Virginia and provides that upon becoming a Covered
2457	Institution, the University shall have responsibility and accountability for human resources management
2458	for all University employees, defined in the Act as "Covered Employees," who pursuant to subsection A
2459	of § 23-38.114 of the Act "are state employees of" the University. Specifically, the Act provides that, as
2460	of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified
2461	Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.)
2462	of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by
2463	the Virginia Department of Human Resource Management, provided that they may subsequently elect to
2464	become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt
2465	from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2; (ii) remain subject to the
2466	state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ 2.2-3000
2467	et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective
2468	Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of
2469	Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject
2470	to certain specified conditions, continue to participate in either state- or University-sponsored benefit
2471	plans as described by the Management Agreement.
2472	The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law
2473	and constitute the human resources policies to be included in any human resources system adopted by
2474	the University for its employees.
2475	This Policy is intended to cover the authority that may be granted to the University pursuant to
2476	Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
2477	Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
2478	and the University's Enabling Legislation, are not affected by this Policy.
2479	II. DEFINITIONS.
2480	As used in this policy, the following terms shall have the following meanings, unless the context
2481	requires otherwise:
2482	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
2483	Chapter 4.10 of Title 23 of the Code of Virginia.
2484	"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
2485	State University.
2486	"Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29
2487	(§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by
2488	the Virginia Department of Human Resource Management and who are not Participating Covered
2489	Employees.

2490 "Covered Employee" means any person who is employed by the University on either a salaried or **2491** non-salaried (wage) basis.

2492 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement
2493 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that
2494 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of
2495 Substants 2 of the Ast

2495 Subchapter 3 of the Act.

2496 "Employee" means Covered Employee unless the context clearly indicates otherwise.

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

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

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

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

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

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

2517 "University employee" means a Covered Employee.

2518 "University Human Resources System" means the human resources system for University employees 2519 as provided for herein. 2520

III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

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

2527 The Act extends and reinforces the human resources autonomy previously granted to the University. 2528 This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and 2529 have in place by or after the Effective Date of its initial Management Agreement with the 2530 Commonwealth, a human resources system or systems for all University employees. On that Effective 2531 Date, and until changed by the University or unless otherwise specified in this Policy, the systems for 2532 University employees shall be the same systems applicable to those employees in effect immediately 2533 prior to that Effective Date. 2534

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

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

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

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

2555 The University commits to regularly engage employees in appropriate discussions and to receive 2556 employee input as the new University Human Resources Systems are developed. The University will 2557 regularly communicate the details of new proposals to all employees who are eligible to participate in

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the new University Human Resources System through written communication, open meetings, and
website postings as appropriate, so that employees will have full information that will help them
evaluate the merits of the new human resource system compared to the then-current State human
resource system.

2562 Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and **2563** until amended as described below, the University's human resources systems shall consist of the **2564** following:

2565 1. The current human resources system for faculty described in the Virginia Tech Faculty Handbook
2566 and Special Research Faculty Handbook as posted on the University's web site,
2567 http://www.policies.vt.edu/, and periodically amended;

- 2568 2. The current human resources system for "Classified Employees" as posted on the Virginia
 2569 Department of Human Resource Management website at http://www.dhrm.state.va.us/hrpolicy/policy.htm
 2570 and the University's website, http://www.policies.vt.edu/, and Human Resources' website,
 2571 http://www.hr.vt.edu, as periodically amended;
- 2572 3. The Human Resources System for salaried nonfaculty "Participating Covered Employees," as 2573 posted on the University's website, http://www.policies.vt.edu, and Human Resources' website, 2574 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 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.
- **2584** B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human **2585** 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.
- 2593 VI. HUMAN RESOURCES POLICIES.
- **2594** The Human Resources Systems adopted by the University pursuant to Governing Law and this **2595** Policy, as set forth in Section V above shall embody the following human resources policies and **2596** principles:
- **2597** *A. Election by Salaried Nonfaculty University Employees.*
- Upon the adoption by the University of a University Human Resources System, all salaried 2598 2599 nonfaculty University employees who were in the employment of the University as of the day prior to the 2600 Effective Date of its initial Management Agreement with the Commonwealth, shall be given written 2601 notice of their right to elect to participate in and be governed by either (i) the State human resources 2602 program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the 2603 Code of Virginia and administered by the Department of Human Resource Management, or (ii) the 2604 University Human Resources System. A salaried nonfaculty University employee who elects to continue 2605 to be governed by the State human resources program described above shall continue to be governed by 2606 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 2607 2608 in and be governed by the University Human Resources System, also, by that election, shall be deemed 2609 to have elected to be eligible to participate in and to be governed by the human resources, authorized 2610 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. 2611

2612 Each such salaried nonfaculty University employee, shall be given at least 90 days to make the
2613 election required by the prior paragraph. Such 90 day period shall begin to run on the date on which
2614 the University Human Resources System becomes effective for that University employee's classification of
2615 employees. If such a salaried nonfaculty University employee does not make an election by the end of
2616 that specified election period, that University employee shall be deemed not to have elected to
2617 participate in the University Human Resources System. If such a salaried nonfaculty University
2618 employee elects to participate in the University Human Resources System.

2619 irrevocable. At least every two years, the University shall offer to salaried nonfaculty University 2620 employees who have elected to continue to participate in the state human resources program set forth in 2621 Chapters 28 (§ 22.-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, an 2622 opportunity to elect to participate in the University Human Resources System; provided that, each time 2623 prior to offering such opportunity to such salaried nonfaculty University employees, and at least once 2624 every two years after the effective date of the University Human Resources System, the University shall 2625 make available to each of its salaried nonfaculty University employees a comparison of its human 2626 resources program for that classification of salaried nonfaculty University employee with the State 2627 human resources program for comparable State employees, including but not limited to a comparability 2628 assessment of compensation and benefits. A copy of the human resources program comparison shall be 2629 provided to the Department of Human Resource Management.

2630 *B.* Classification and Compensation.

2631 1. General. The Systems shall include classification and compensation plans that are fair and 2632 reasonable, and are based on the availability of University financial resources. The plans adopted by 2633 the University for its faculty and other Participating Covered Employees shall be independent of, and 2634 need not be based on, the classification and compensation plans of the Commonwealth, do not require 2635 the approval of any State agency or officer, and shall be subject to the review and approval by the 2636 Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its 2637 classification and compensation plans to all University employees. The plans applicable to Participating 2638 Covered Employees may or may not include changes in classification or compensation announced by the 2639 Commonwealth depending on such factors as the availability of necessary financial resources to fund 2640 any such changes, and subject to the review and approval by the Board of Visitors of any major 2641 changes in the University's compensation plans.

2642 2. Classification Plan. The Systems shall include one or more classification plans for University
2643 employees that classify positions according to job responsibilities and qualifications. On the Effective
2644 Date of the University's initial Management Agreement with the Commonwealth, and until changed by
2645 the University, the classification plans shall be the same plans that are in effect for each group of
2646 employees immediately prior to that Effective Date.

2647 3. Compensation Plan. The Systems shall include one or more compensation plans for each 2648 University employee classification or group. On the Effective Date of the University's initial 2649 Management Agreement with the Commonwealth, and until changed by the Department of Human 2650 Resource Management, the compensation plan for Classified Employees shall be the compensation plan 2651 in effect immediately prior to that Effective Date, known as the Commonwealth's Classified 2652 Compensation Plan. On that Effective Date, and until changed by the University, the compensation plan 2653 or plans for all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt one or more compensation plans for 2654 Participating Covered Employees that are non-graded plan(s) based on internal and external market 2655 data and other relevant factors to be determined annually. Any major change in compensation plans for 2656 2657 Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that 2658 change becomes effective. Any change recommended in the compensation plans may take into account 2659 the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative 2660 value of jobs, the competency and skills of the individual employee, internal equity, and the availability 2661 of necessary financial resources to fund the proposed change. The compensation payable to University 2662 employees shall be authorized and approved only by designated University officers delegated such 2663 authority by the University, and shall be consistent with the approved compensation plan for the 2664 relevant position or classification. Further approval by any other State Agency, governmental body or 2665 officer is not required for setting, adjusting or approving the compensation payable to individual 2666 Participating Covered Employees.

2667 4. Wages. The Systems shall include policies and procedures for the authorization, computation and
2668 payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and
2669 call back, and for the payment of hourly employees.

2670 5. Payment of Compensation. The Systems shall include policies and procedures for paying **2671** compensation to employees, including the establishment of one or more payday schedules.

2672 6. Work Schedule and Workweek. The Systems shall include policies and procedures for the
2673 establishment of, and modifications to, work schedules and workweeks for all University employees,
2674 including alternative work schedules and sites, and telecommuting policies and procedures.

2675 7. Other Classification and Compensation Policies and Procedures. The Systems may include any
2676 other reasonable classification and compensation policies and procedures the President, acting through
2677 the Executive Vice President and Chief Operating Officer, deems appropriate.

2678 *C. Benefits.*

2679 The Systems shall provide fringe benefits to all benefits eligible employees, including retirement

2680 benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The 2681 benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may 2682 include an optional benefits plan for benefits eligible employees, including additional insurance 2683 coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance 2684 programs, employee intramural and recreational passes, and other wellness programs. As provided in 2685 subsections B and C of § 23-38.119 of the Act, the University may require Participating Covered 2686 Employees to pay all or a portion of the cost of group life, disability and accidental death and 2687 dismemberment insurance, which may be collected through a payroll deduction program. Participating 2688 Covered Employees shall not be required to present evidence of insurability for basic group life 2689 insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement 2690 System group insurance programs under the terms of and to the extent allowed by subsections B and D 2691 of § 23-38.119 of the Act or any other provision of law.

2692 Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until 2693 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 2694 2695 and govern all eligible University employees. If, however, the University has been or is permitted by law 2696 other than the Act to establish an alternative health insurance plan or an alternative faculty retirement 2697 plan or plans, such alternative health insurance or faculty retirement plan or plans shall apply to and 2698 govern the University employees included in such plan or plans.

2699 The Systems may provide different benefits plans for reasonably different groups or classifications of 2700 employees, and may provide benefits to part-time employees. On the Effective Date of the University's 2701 initial Management Agreement with the Commonwealth, and until changed by the appropriate governing 2702 authority, the benefits plans provided by the University to Classified Employees and Participating 2703 Covered Employees shall be the benefits plans provided to that group or classification as of the date 2704 immediately prior to that Effective Date. On or after that Effective Date, alternative University group 2705 life, accidental death and dismemberment, and short- and long-term disability plans may be provided to 2706 eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the 2707 execution of participation agreements as provided in subsections B and C of § 23-38.119 of the Act, 2708 they may be provided by the appropriate State programs, but no contributions to the State programs by 2709 the University shall be required for Participating Covered Employees who do not participate in the 2710 programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted 2711 under current law in University employee benefit plans, other than Classified Employee benefits plans, 2712 shall be approved by the Board of Visitors, including the authority to increase the Cash Match 2713 Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and 2714 the authority to implement cafeteria-style benefits for University employees other than Classified 2715 Employees.

2716 Insurance and all proceeds therefrom provided pursuant to § 23-38.119 of the Act shall be exempt 2717 from legal process and may be subject to assignment as provided in subsection A of § 23-38.119 of the 2718 Act. 2719

D. Employee Relations.

2720 1. General. The Systems shall contain provisions that protect the rights and privileges of University 2721 employees consistent with sound management principles and fair employment practice law.

2722 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety 2723 compliance with applicable law and regulations.

2724 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to 2725 the performance of job duties, and free from intimidation or coercion in violation of State or federal 2726 law, including sexual harassment or other discrimination.

2727 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific 2728 to policies and procedures for awarding, honoring, or otherwise recognizing University employees, 2729 including but not limited to those who have performed particularly meritorious service for the 2730 University, have been employed by the University for specified periods of time, or have retired from the 2731 University after lengthy service.

2732 5. Counseling Services. The Systems shall provide counseling services through the State's Employee 2733 Assistance Program or a University Employee Assistance Program to any eligible University employee 2734 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the 2735 circumstances under which the time necessary to participate in such counseling may be granted.

2736 6. Unemployment Compensation. The Systems shall ensure that University employees receive the full 2737 unemployment compensation benefits to which they are legally entitled, and that the University's liability 2738 is limited to legitimate claims for such benefits.

7. Workers' Compensation. The Systems shall ensure that University employees have workers' 2739 2740 compensation benefits to which they are legally entitled pursuant to the State Employees' Workers

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

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

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

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

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

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

2799 Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 of the Code
2800 of Virginia, on State employees who were hired by a State agency or executive branch institution before
2801 the Effective Date of the University's initial Management Agreement with the Commonwealth and who

2802 were separated after that date by that State agency or executive branch institution because of a 2803 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 2804 2805 Management, the University shall classify the separated employee according to its classification system 2806 and shall place the separated employee appropriately. The University may include separate policies for 2807 reasonably distinguishable groups of University employees. On or after the Effective Date of the 2808 University's initial Management Agreement with the Commonwealth, all employees from other State 2809 agencies and executive branch institutions who are placed by the University under the provisions of the 2810 State Layoff Policy shall be Participating Covered Employees.

2811 13. Severance Benefits. In accordance with the terms of the Act, the University shall adopt severance 2812 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 2813 the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to 2814 2815 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 2816 2817 Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula 2818 according to which cash severance benefits may be converted to years of age or creditable service for 2819 Participating Covered Employees who participate in the Virginia Retirement System. An employee 2820 becoming, on such Effective Date, a Covered Employee shall not constitute a severance or reduction in 2821 force to which severance or Workforce Transition Act policies would apply.

2822 14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i) 2823 establish and maintain a work environment at the University that is free from the adverse effect of 2824 alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with 2825 the Virginia Polytechnic Institute and State University Alcohol and Other Drugs Policy, (iii) describe the 2826 range of authorized disciplinary action, including termination where appropriate, for violations of such 2827 policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide 2828 University employees access to assistance and treatment for problems involving alcohol and other drugs, 2829 (v) provide for the circumstances under which employees are required to report certain violations of the 2830 policies and procedures to their supervisor, and the University is required to report those violations to a 2831 federal contracting or granting agency, (vi) describe the circumstances under which personnel records 2832 of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and 2833 (vii) provide notice to University employees of the scope and content of the University alcohol and other 2834 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal 2835 Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, 2836 reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing 2837 for University positions that are particularly safety sensitive, such as those requiring a Commercial 2838 Driver's License or the provision of patient care.

2839 15. Background Checks. The Systems shall include a process for conducting background checks, 2840 which may include but is not limited to reference checks, educational/professional credentialing checks, 2841 and conviction and driver's records checks on applicants for full-time or part-time positions at the 2842 University, and for addressing situations where employees do not disclose a conviction on their 2843 application or otherwise falsify their application with regard to information concerning their 2844 education/professional credential and/or prior convictions.

2845 16. Other Employee Relations Policies and Procedures. The Systems shall include any other 2846 reasonable employee relations policies or procedures that the President, acting through the Executive 2847 Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited 2848 to, policies or procedures relating to orientation programs for new or re-employed University 2849 employees, an employee suggestion program, the responsibility of University employees for property 2850 placed in their charge, work breaks, inclement weather and emergencies, and employment outside the 2851 University. 2852

E. Leave and Release Time.

2853 The Systems shall include policies and procedures regarding leave for eligible employees. The 2854 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal 2855 uses. The Systems may provide for release time for such matters as the donation of blood, participation 2856 in an employee assistance program and other appropriate employment-related matters. On or after the 2857 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is 2858 adopted by the appropriate authority, the University shall continue to provide leave and release time to 2859 Participating Covered Employees in accordance with the leave and release time policies and procedures 2860 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 2861 2862 Participating Covered Employees.

2863 *F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

2864 1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and
2865 procedures to ensure that all aspects of human resources management, including the employment of
2866 University employees, meet all requirements of federal and state law, and of the relevant policies of the
2867 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

2868 2. Employment. The Systems shall include policies and procedures for the recruitment, selection and 2869 hiring of University employees that are based on merit and fitness, including where appropriate a 2870 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference 2871 checks and conviction record checks. On and after the Effective Date of its initial Management 2872 Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies 2873 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 2874 2875 accordance with applicable law. In order to encourage employees to attain the highest level positions 2876 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 2877 2878 employees, including the effect of promotion on an employee's compensation.

2879 On or after the Effective Date of the University's initial Management Agreement with the
2880 Commonwealth, all employees hired from other state agencies shall be Participating Covered
2881 Employees. University Classified Employees who change jobs within the University through a
2882 competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a
2883 Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to
2884 become a Participating Covered Employee, that decision shall be irrevocable.

2885 3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable
2886 notice, where appropriate, of a decision either by the employee or by the University to separate the
2887 employee from the University in accordance with policies governing performance, conduct, or layoff.
2888 G. Information Systems.

2889 The University shall provide an electronic file transfer of information on all salaried University 2890 employees and shall continue to provide the Employee Position Reports to meet the human resources 2891 reporting requirements specified by law or by request of the Governor or the General Assembly, unless 2892 the University is specifically exempted from those requirements. The University shall conduct 2893 assessments to demonstrate its accountability for human resources practices that comply with laws and 2894 regulations. The Department of Human Resource Management and the University have entered into a 2895 Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to 2896 time by agreement of the parties, regarding the specific data and reporting requirements. The University 2897 shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department 2898 of Human Resources Management.

2899 *VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND* **2900** *OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.*

2901 On and after the Effective Date of its initial Management Agreement with the Commonwealth, 2902 University employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the University. Classified Employees shall continue to be 2903 2904 subject to the human resources policies and exceptions to those policies adopted or approved by the 2905 Department of Human Resource Management. In addition, all University employees also shall remain 2906 subject to any other human resources policies adopted by the Board of Visitors applicable to University 2907 personnel unless University employees or a subset thereof are specifically exempted from those other 2908 human resources policies either by those other policies or by this Policy.

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ATTACHMENT 3

Memorandum of Understanding

Between Virginia Polytechnic Institute and State University and the

Department of Human Resources Management Regarding

The Reporting of Human Resources Management Data

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

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

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2924 2925 2926 2927 2928 2929	1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse. a. The University will provide a flat file of designated personnel data. For "Classified Employees", the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The University will provide a data dictionary to DHRM. The file of designated data will be
2930	specifically described by an addendum to this Memorandum upon the agreement of the University and
2931	DHRM.
2932 2933	b. The University will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and
2934	salary adjustments. The file of relevant personnel actions and designated data to be provided for each
2935	action will be specifically described by an addendum to this Memorandum upon the agreement of the
2936	University and DHRM.
2937 2938	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
2939	University's compliance with relevant federal and state employment laws and regulations.
2940	3. The University may key data into the Benefits Enrollment System or provide a batch file, or
2941 2942	employees may use Employee Direct (employee self-service). 4. Other reports to be provided by the University include the following:
2943	a. Monthly Employee Position Report.
2944	b. Annual report on salaried, wage, and contract employees.
2945 2946	The undersigned hereby agree to the provisions contained in the MOU. APPROVALS:
2940	Virginia Polytechnic Institute and State University:
2948	
2949 2950	By:Date Executive Vice President & Chief Operating Officer
2950 2951	Executive vice Freshent & Chief Operating Officer
2952	
2953	Department of Human Resources Management:
2954 2955	By:Date
2956	Director, Department of Human Resource Management
2957	
2958 2959	EXHIBIT F
2960	MANAGEMENT AGREEMENT
2961	BETWEEN
2962 2963	THE COMMONWEALTH OF VIRGINIA AND
2964	VIRGINIA POLYTECHNIC INSTITUTE
2965	AND STATE UNIVERSITY
2966 2967	PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION
2968	FINANCIAL AND ADMINISTRATIVE OPERATIONS
2969	ACT OF 2005
2970	
2971 2972	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
2973	
2974	THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
2975 2976	AND STATE UNIVERSITY POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
2970	I. PREAMBLE.
2978	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
2979	4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting
2980 2981	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
2982	negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board
2983	of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations
2984	and management.

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

2989 II. DEFINITIONS.

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

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

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

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

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

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

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

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

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

3014 III. SCOPE OF POLICY.

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

3019 Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the 3020 benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the 3021 Agriculture Experiment Station Division shall not receive any additional independent financial 3022 operations and management authority as a result of this Management Agreement beyond the 3023 3024 independent financial operations and management authority that it had prior to the Effective Date of the 3025 University's initial Management Agreement with the Commonwealth or that it may be granted by law in 3026 the future. 3027

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

3028 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 3029 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 3030 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 3031 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 3032 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 3033 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 3034 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 3035 and procedures. 3036

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

3037 The President, acting through the Executive Vice President and Chief Operating Officer, shall 3038 continue to be authorized by the Board to maintain existing and implement new policies governing the 3039 management of University financial resources. These policies shall continue to (i) ensure compliance 3040 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard 3041 3042 to the establishment of the underlying accounting records of the University and the allocation and 3043 utilization of resources within the accounting system, including the relevant guidance provided by the 3044 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and 3045

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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.

3049 The financial management system shall continue to include a financial reporting system to satisfy 3050 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 3051 as specified in the related State Comptroller's Directives, and the University's separately audited 3052 financial statements. To ensure observance of limitations and restrictions placed on the use of the 3053 resources available to the University, the accounting and bookkeeping system of the University shall 3054 continue to be maintained in accordance with the principles prescribed for governmental organizations 3055 by the Governmental Accounting Standards Board.

3056 In addition, the financial management system shall continue to provide financial reporting for the 3057 President, acting through the Executive Vice President and Chief Operating Officer, and the Board of 3058 Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon 3059 the Effective Date of the initial Management Agreement between the University and the Commonwealth, 3060 except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the 3061 University shall not be required to record its financial transactions in the Commonwealth's Accounting 3062 and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its 3063 financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in 3064 addition to CARS, but shall have its own financial reporting system. The University's financial reporting 3065 system shall provide (i) summary monthly reports for State agencies including, but not limited to, the 3066 Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and 3067 Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for 3068 Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on 3069 Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible 3070 with the Commonwealth's accounting system, as may be requested by the requesting State agency, and 3071 (ii) such other special reports as may be requested from time to time.

3072 VI. FINANCIAL MANAGEMENT POLICIES.

3073 The President, acting through the Executive Vice President and Chief Operating Officer, shall create 3074 and implement any and all financial management policies necessary to establish a financial management 3075 system with adequate risk management and internal control processes and procedures for the effective 3076 protection and management of all University financial resources. Such policies will not address the 3077 underlying accounting principles and policies employed by the Commonwealth and the University, but 3078 rather will focus on the internal operations of the University's financial management. These policies 3079 shall include, but need not be limited to, the development of a tailored set of finance and accounting 3080 practices that seek to support the University's specific business and administrative operating 3081 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 3082 3083 general principles contained in the Commonwealth's Accounting Policies and Procedures such as 3084 establishing strong risk management and internal accounting controls to ensure University financial 3085 resources are properly safeguarded and that appropriate stewardship of public funds is obtained 3086 through management's oversight of the effective and efficient use of such funds in the performance of 3087 University programs.

3088 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University
3089 shall continue to follow the Commonwealth's accounting policies until such time as specific alternate
3090 policies can be developed, approved and implemented. Such alternate policies shall include applicable
3091 accountability measures and shall be submitted to the State Comptroller for review and comment before
3092 they are implemented by the University.

3093 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

3094 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the
3095 University shall have the power and authority to manage all monies received by it. All State general
3096 funds to be allocated to the University shall remain subject to the appropriations process.

3097 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher 3098 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 3099 Assembly the degree to which each public institution of higher education of the Commonwealth has met 3100 the financial and administrative management and educational-related performance benchmarks called 3101 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 3102 3103 § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full 3104 fiscal year for which the financial and administrative management and educational-related performance 3105 benchmarks described in § 23-9.6:1.01 of the Code of Virginia, are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the 3106

3107 Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of \$ 23-38.88 of the Act, shall receive certain financial incentives, including the interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.

3112 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
3113 which it has received such certification from SCHEV, the University is authorized to hold and invest
3114 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary
3115 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;

3118 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section
3119 IX below;

3120 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall 3121 hold in escrow all interest earned on the University's tuition and fees and other non-general fund 3122 Educational and General Revenues. Upon receipt of the required State Council of Higher Education for 3123 Virginia certification that the University has met such institutional performance benchmarks and the 3124 conditions prescribed in subsection B of § 23-38.88 of the Act, the Governor shall include in the next 3125 budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following 3126 fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided 3127 in subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes 3128 related to its mission. If public institutions of higher education of the Commonwealth are permitted, or 3129 the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the 3130 interest the Commonwealth would have earned on sponsored programs and research funds, then this 3131 paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

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

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

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

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

3147 The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 3148 3149 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 3150 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 3151 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be 3152 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 3153 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to 3154 the Department of Planning and Budget by July 31 of the subsequent fiscal year.

3155 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 3156 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 3157 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the 3158 intent of the Commonwealth and the University that the University shall be exempt from the revenue 3159 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, 3160 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the 3161 University that the University shall be entitled to retain non-general fund savings generated from 3162 changes in Commonwealth rates and charges, including but not limited to health, life, and disability 3163 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than 3164 reverting such savings back to the Commonwealth. This financial resource policy assists the University 3165 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. 3166

3167 The President, acting through the Executive Vice President and Chief Operating Officer, shall

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3168 continue to provide oversight of the University's cash management system which is the framework for 3169 the retention of non-general funds. The Internal Audit Department of the University shall periodically 3170 audit the University's cash management system in accordance with appropriate risk assessment models 3171 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight 3172 shall continue to be provided through the annual audit and assessment of internal controls performed by 3173 the Auditor of Public Accounts. For the receipt of general and non-general funds, the University shall 3174 conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code 3175 of Virginia as it currently exists and from time to time may be amended.

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6 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.

3183 These shall include, but not be limited to, establishing the criteria for granting credit to University 3184 customers; establishing the nature and timing of collection procedures within the above general 3185 principles; and the independent authority to select and contract with collection agencies and, after 3186 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 3187 collection activities for all University accounts receivable such as reporting delinquent accounts to 3188 credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 3189 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's 3190 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and 3191 the State Comptroller to implement such Programs, and shall provide a quarterly summary report of 3192 receivables to the Department of Accounts in accordance with the reporting procedures established 3193 pursuant to the Virginia Debt Collection Act.

3194 IX. DISBURSEMENT MANAGEMENT.

3195 The President, acting through the Executive Vice President and Chief Operating Officer, shall 3196 continue to be authorized to create and implement any and all disbursement policies as part of a system 3197 for the management of University financial resources. The disbursement management policies shall 3198 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in 3199 the execution of the University's operations. These policies also shall continue to address the timing of 3200 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the 3201 appropriateness of certain goods or services relative to the University's mission, including travel-related 3202 disbursements. Further, the University's disbursement policy shall continue to provide for the 3203 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 3204 3205 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 3206 3207 Commonwealth's Debt Set-Off Collection Programs.

3208 Beginning with the fiscal year after the first fiscal year for which it first receives the required 3209 certification from SCHEV, the University may draw down its general fund appropriations (subject to 3210 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. 3211 Such funds shall be available to the University for disbursement as provided in the then-current rules of 3212 the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance 3213 with the following schedule:

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

3219 ii) The University may draw down the sum of all tuition and E&G fees and all other nongeneral
 3220 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.

3226 These disbursement policies shall authorize the President, acting through the Executive Vice 3227 President and Chief Operating Officer, to independently select, engage, and contract for such 3228 consultants, accountants, and financial experts, and other such providers of expert advice and 3229 consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may 3230 be necessary or desirable in his or her discretion. The policies also shall continue to include the ability 3231 to locally manage and administer the Commonwealth's credit card and cost recovery programs related 3232 to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those 3233 programs, provided that the University shall submit the credit card and cost recovery aspects of its 3234 financial and operations policies to the State Comptroller for review and comment prior to implementing 3235 those aspects of those policies. The disbursement policies shall ensure that adequate risk management 3236 and internal control procedures shall be maintained over previously decentralized processes for public 3237 records, payroll, and non-payroll disbursements. The University shall continue to provide summary 3238 quarterly prompt payment reports to the Department of Accounts in accordance with the reporting 3239 procedures established pursuant to the Prompt Payment Act.

3240 The University's disbursement policies shall be guided by the principles of the Commonwealth's 3241 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the 3242 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 3243 3244 3245 State Comptroller for review and comment prior to their implementation by the University. 3246

X. DEBT MANAGEMENT.

3247 The President, acting through the Executive Vice President and Chief Operating Officer, shall 3248 continue to be authorized to create and implement any and all debt management policies as part of a 3249 system for the management of University financial resources.

3250 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes, 3251 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury 3252 Board, and that are consistent with debt capacity and management policies and guidelines established 3253 by its Board of Visitors, without obtaining the consent of any legislative body, elected official, 3254 commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without 3255 any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; 3256 provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds 3257 pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for 3258 3259 review and comment prior to its adoption by the University.

3260 The University recognizes that there are numerous types of financing structures and funding sources 3261 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 3262 the President, acting through the Executive Vice President and Chief Operating Officer, within the 3263 context of the overall portfolio to ensure that any financial product or structure is consistent with the 3264 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a 3265 3266 full understanding of the transaction, including (i) the identification of potential risks and benefits, and 3267 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or 3268 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be 3269 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt. 3270 XI. INVESTMENT POLICY.

3271 It is the policy of the University to invest its operating and reserve funds solely in the interest of the 3272 University and in a manner that will provide the highest investment return with the maximum security 3273 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act 3274 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence 3275 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity 3276 and familiar with such matters would use in the conduct of an enterprise of a like character and with 3277 like aims.

3278 Endowment investments shall be invested and managed in accordance with the Uniform Management 3279 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 3280 3281 University's operating and reserve funds. 3282

XII. INSURANCE AND RISK MANAGEMENT.

3283 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any 3284 intent during the next biennium to withdraw from any insurance or risk management program made 3285 available to the University through the Commonwealth's Division of Risk Management and in which the 3286 University is then participating, to enable the Commonwealth to complete an adverse selection analysis 3287 of any such decision and to determine the additional costs to the Commonwealth that would result from 3288 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University 3289 proceeds to withdraw from the insurance or risk management program, the University shall reimburse

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3290 3291 3292 3293	the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.
3293 3294 3295 3296 3297	2. That the following Chapter 2 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and The College of William and Mary in Virginia:" <i>CHAPTER 2.</i>
3297 3298 3299	MANAGEMENT AGREEMENT BY AND BETWEEN
3300	THE COMMONWEALTH OF VIRGINIA
3301	AND THE COLLECE OF WHILIAM AND MADY IN VIDCINIA
3302 3303	THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the
3304	Commonwealth of Virginia (hereafter, the Commonwealth) and The College of William and Mary in
3305 3306	Virginia (hereafter, the College) provides as follows: RECITALS
3307	WHEREAS, the College has satisfied the conditions precedent set forth in subsections A and B of
3308 3309	§ 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
3310	Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code
3311	of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:
3312 3313	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
3314	the resolution required by subdivision A 1 of § 23-38.97 of the Act;
3315 3316	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
3317	Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate
3318 3319	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
3320	has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and
3321 3322	3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act the Governor has found that the College has fulfilled the requirements of subdivision A 2 of § 23-38.97, and therefore
3323	has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the
3324 3325	Commonwealth with the College; and
3325 3326	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.
3327	AGREEMENT
3328 3329	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
3330	of Virginia, and in consideration of the foregoing premises, the Commonwealth and the College do now
3331 3332	agree as follows: ARTICLE 1. DEFINITIONS.
3333	As used in this Agreement, the following terms have the following meanings, unless the context
3334 3335	requires otherwise: "Act" means the Restructured Higher Education Administrative and Financial Operations Act,
3336	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
3337 3338	"Agreement" means "Management Agreement." "Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William
3339	and Mary in Virginia and the Virginia Institute of Marine Science.
3340 3341	"College" means the College of William and Mary in Virginia (State Agency 204) and the Virginia Institute of Marine Science (State Agency 268).
3342	"Covered Employee" means any person who is employed by the College on either a salaried or wage
3343 3344	basis. "Covered Institution" means, on and after the effective date of its initial management agreement with
3345	the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has
3346 3347	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.
3348	"Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
3349	Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
3350	missions of the individual public institutions of higher education of the Commonwealth.

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

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

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

3357 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

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

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

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

3396 The Board of Visitors of the College shall at all times by fully and ultimately accountable for the
3397 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
3398 of, this Management Agreement and the policies adopted by it and attached as Exhibits G through L.

3399 Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally
3400 permissible procedures, specifically delegate the duties and responsibilities set forth in this Management
3401 Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the
3402 Board and attached hereto as Exhibits G through L, to a person or persons within the College.

3403 SECTION 2.1.3. Reimbursement by the College of Certain Costs. By July 1 of each odd-numbered 3404 year, the College shall inform the Secretary of Finance of any intent during the next biennium to 3405 withdraw from any health or other group insurance or risk management program made available to the 3406 College through any agency, body corporate, political subdivision, authority, or other entity of the 3407 Commonwealth, and in which the College is then participating, to enable the Commonwealth's actuaries 3408 to complete an adverse selection analysis of any such decision and to determine the additional costs to 3409 the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College proceeds to withdraw from such health or other group insurance or 3410 risk management program, the College shall, pursuant to subdivision $D \ 2 \ c \ of \ 8 \ 23-38.88$, reimburse the 3411

3412 Commonwealth for all such additional costs attributable to such withdrawal as determined by the 3413 Commonwealth's actuaries.

3414 SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subdivision D 2
3415 c of § 23-38.88 of the Act, the College has given consideration to potential future impacts of tuition
3416 increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has discussed
3417 those potential impacts with the Executive Director and staff of that Plan and with parties in the
3418 Administration who participated in the development of this Management Agreement. The Executive
3419 Director of the Plan has provided to the College and the Commonwealth the Plan's assumptions
3420 underlying the contract pricing of the program.

3421 SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to 3422 § 23-38.110 of the Act and subject to the provisions of this Management Agreement, the College may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ 2.2-4300 et 3423 3424 seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA 3425 must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors 3426 shall adopt and comply with procurement policies that are based upon competitive principles and seek 3427 competition to the maximum practical degree. The Policy Governing the Procurement of Goods, 3428 Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules 3429 Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) 3430 attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA 3431 required by subsections A and B of § 23-38.110 of the Act.

3432 Subsection D of § 23-38.110 of the Act requires that the College identify the public, educational, and 3433 operational interests served by any procurement rule or rules that deviate from those in the VPPA. The 3434 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 3435 3436 3437 College to support the requirements of its growing teaching, research and outreach missions. Greater 3438 autonomy in procurement will improve internal capacity to respond quickly to emergent material and 3439 service issues and, therefore, enable the College to be more efficient and effective in meeting the 3440 Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. 3441 Taken collectively, the College's procurement policies and rules that differ from those required by the 3442 VPPA will enhance procurement "best practices" as they currently are being observed within the higher 3443 education community nationally. Further, these changes will provide efficiencies to both the College 3444 and public sector suppliers.

3445 SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act requires that 3446 a Covered Institution include in its management agreement with the Commonwealth the quantification of 3447 cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3448 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been 3449 implemented by the College, the parties agree that the College is not in a position to quantify any such 3450 cost savings at this time, although the College expects that there will be cost savings resulting from the 3451 additional authority granted to the College pursuant to Subchapter 3 of the Act and that such cost 3452 savings will be part of the determinations made during the reviews, assessments, and audits to be 3453 conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative 3454 Audit and Review Commission, and the State Council of Higher Education for Virginia, and as 3455 otherwise described in Section 2.1.1 above.

3456 SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the College shall 3457 continue to fully participate in, and receive funding support from the many and varied programs 3458 established now or in the future by the Commonwealth to provide support for Virginia's public 3459 institutions of higher education and for Virginians attending such institutions, including but not limited 3460 to: the state capital outlay and bond financing initiatives undertaken from time to time by the 3461 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ 23-30.24 et 3462 seq.) of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the 3463 Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student 3464 financial assistance programs; and other statewide programs or initiatives that exist, or may be 3465 established, in support of the Commonwealth's higher education institutions, programs, or activities.

3466 SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § 23-38.88 of the Act, the only
3467 implied authority granted to the College by this Management Agreement is that implied authority that is
3468 actually necessary to carry out the expressed grant of financial or operational authority contained in
3469 this Agreement or in the policies adopted by the College's Board of Visitors and attached hereto as
3470 Exhibits G through L.

3471 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

3473 effective date of this Agreement, confers upon the College the enhanced authority and operating 3474 flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. 3475 Therefore, without any further conditions or requirements, the College shall, on and after the effective 3476 date of this Management Agreement, be authorized to exercise the authority conferred upon it by this 3477 Management Agreement, the policies adopted by its Board of Visitors attached hereto as Exhibits G 3478 through L, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the 3479 extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited 3480 by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through 3481 L.

3482 The College and the Commonwealth also acknowledge and agree that, pursuant to subsection A of 3483 § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of 3484 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 3485 Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The 3486 3487 Board of Visitors shall be fully accountable for (a) the management of the College as provided in the Act, (b) meeting the requirements of §§ 2.2-5004, 23-9.2:3.02, and 23-9.6:1.01 of the Code of Virginia, 3488 3489 and (c) meeting such other provisions as are set forth in this Management Agreement.

3490 SECTION 2.2. State Goals.

3491 SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education
3492 of the Commonwealth by subsection B of § 23-38.88 of the Act, prior to August 1, 2005, the Board of
3493 Visitors of the College adopted the resolution setting forth its commitment to the Governor and the
3494 General Assembly to meet the State goals specified in that subsection B. In addition to the above
3495 commitments, the College commits to furthering these State goals by:

3496 1. In addition to its six-year target of achieving \$68 million in external research by 2011-12, the
3497 College, including the Virginia Institute of Marine Science, commits to match from institutional funds,
3498 other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided
3499 by the State in the Appropriation Act above the amount provided from institutional funds for research in
3500 2005-06.

3501 2. In a concerted effort to provide educational opportunities to Virginia students attending 3502 institutions in the Virginia Community College System (VCCS) and Richard Bland College, the College 3503 commits to work with Virginia Polytechnic Institute and State University (Virginia Tech) and the University of Virginia to establish a program under which these three institutions will increase 3504 3505 significantly the number of such students transferring to their institutions. Specifically, pursuant to this 3506 program, the College, Virginia Tech and the University of Virginia collectively commit to enroll as 3507 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, 3508 for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not 3509 3510 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 3511 3512 that they will mutually determine how to divide the responsibility for these additional transfer students 3513 equitably among themselves.

3514 3. As an institutional priority and obligation, the College commits to the Governor and General 3515 Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags the Commonwealth in education, 3516 3517 income, employment, and other factors. The College commits to establish a formal partnership with that 3518 area to develop jointly a specific action plan that builds on the College's programmatic strengths and 3519 uses the College's faculty, staff and, where appropriate, student expertise to stimulate economic 3520 development in the area to make the area more economically viable, and to improve student 3521 achievement and teacher and administrator skill sets in a school, schools, or the school system in that 3522 area. The College shall submit the action plan to the Governor and General Assembly by no later than 3523 December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each 3524 year on its progress in implementing the action plan during the prior fiscal year.

 SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the Code of Virginia, the College, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing the College's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12.

3530 Subsection A of § 23-9.2:3.02 requires the College to update this Six-Year Plan by October 1 of each
3531 odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement
3532 address, among other issues, such matters as the College's in-state undergraduate student enrollment, its
3533 financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students.

3534 These matters are addressed below and in the College's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the College's Six-Year Plan and the description below meet the requirement of subsection B of § 23-38.97 of the Act.

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

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

3548 At the present time, any needy Virginian at the College receives a combination of grants and loans 3549 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, 3550 including those with low family incomes, will graduate with more than \$16,000 in indebtedness. This 3551 3552 burdensome level of debt may discourage students from lower SES groups from applying to or accepting 3553 admission from the College. And, if they do attend, their legitimate concern with respect to debt 3554 repayment may discourage them from some career choices like K-12 education or from going on to 3555 graduate or professional school for fear of adding even more to their personal indebtedness. Hence, 3556 over the period of the six-year plan, the College of William and Mary is committed to seeking, from all 3557 sources - state-appropriated scholarship funds, federal, and private support — sufficient funds to assure 3558 that 1) we meet 100% of financial need for in-state undergraduates and 2) any student whose family's 3559 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 3560 3561 aggressive efforts to recruit in-state students from lower SES groups, we hope to double the number of 3562 students who would receive assistance through the Gateway initiative from 280 students to 560 students 3563 3564 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.

3572 The Commonwealth and the College agree that this commitment meets the requirements of subsection **3573** B of § 23-38.104 of the Act.

3574 SECTION 2.3. Authority Granted to the Virginia Institute of Marine Science. The Virginia Institute 3575 of Marine Science (hereafter, the Institute) shall receive the benefits of the additional financial and 3576 operational authority granted by this Management Agreement as it and the policies adopted by the 3577 Board of Visitors attached as Exhibits G through L are implemented by the College on behalf of the 3578 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 3579 3580 independent financial and operational authority that it had prior to the effective date of this 3581 Management Agreement or that it may be granted by law in the future.

3582 SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, the College shall 3583 be governed and administered in the manner provided not only in this Management Agreement, but also 3584 as provided in the Appropriation Act then in effect and the College's Enabling Legislation.

3585 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 **3589** Agreement as Exhibits G through L, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.

3591 SECTION 2.4.2. The College's Enabling Legislation. As provided in subsection C of § 23-38.91 of **3592** the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the College's **3593** Enabling Legislation, the Enabling Legislation shall control.

3594 SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § 23-38.92 of the

3595 Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of 3596 this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, 3597 supervision, regulation, and control of public institutions of higher education shall be applicable to the 3598 College as provided by the express terms of this Management Agreement. As further provided in 3599 subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any 3600 provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this 3601 Management Agreement shall control.

SECTION 2.4.4. 3602 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, 3603 3604 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 3605 of Virginia, the College shall remain a public institution of higher education of the Commonwealth 3606 following the effective date of this Management Agreement, and shall retain the authority granted and 3607 any obligations required by such provisions, unless and until provided otherwise by law other than the 3608 3609 Act. In addition, the College shall retain the authority, and any obligations related to the exercise of 3610 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.), 3611 3612 Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.), 3613 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 3614 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 3615 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 3616 seq.), unless and until provided otherwise by law other than the Act.

3617 SECTION 2.4.5. Public Access to Information. As provided in § 23-38.95 of the Act, the College 3618 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 3619 3620 business pursuant to § 2.2-3709 if expressly named therein and, in all cases, may conduct business as a 3621

"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 3622 State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) that are 3623 3624 applicable to officers and employees of a state governmental agency shall continue to apply to the 3625 members of the Board of Visitors of the College and to its Covered Employees.

3626 SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other 3627 powers and authorities granted to the College pursuant to any other sections of the Code of Virginia, 3628 including other provisions of the Act, are not affected by this Management Agreement or the Board 3629 policies attached hereto as Exhibits G through L.

3630 ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, 3631 MANAGEMENT AGREEMENT.

3632 SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the 3633 Board of Visitors policies attached hereto as Exhibits G through L shall be reported to the Secretaries 3634 of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on 3635 Finance and the House Committee on Appropriations and shall be posted on the College's website. The 3636 change or deviation shall become effective unless one of the above persons notifies the College in 3637 writing within 60 days that the change or deviation is substantial and material. Any substantial and 3638 material change or deviation shall require the execution by the parties of an amendment to this 3639 Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of 3640 § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to 3641 subdivision D 4 of § 23-38.88 of the Act. 3642

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

3643 SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § 23-38.88, and § 23-38.98, of the Act, if 3644 the Governor makes a written determination that the College is not in substantial compliance with the 3645 terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor 3646 shall provide a copy of that written determination to the Rector of the Board of Visitors of the College 3647 and to the members of the General Assembly, and (ii) the College shall develop and implement a plan 3648 of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance 3649 with the terms of this Management Agreement and with the requirements of the Act, as soon as 3650 practicable, and shall provide a copy of such corrective action plan to the members of the General 3651 Assembly. If after a reasonable period of time after the corrective action plan has been implemented by 3652 the College, the Governor determines that the institution is not yet in substantial compliance with this 3653 Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, the College shall no longer be 3654 allowed to exercise any restructured financial or operational authority pursuant to the provisions of 3655

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3656 Subchapter 3 of the Act unless and until the College has entered into a subsequent management
3657 agreement with the Secretary or Secretaries designated by the Governor or the voided Management
3658 Agreement is reinstated by the General Assembly.

3659 SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § 23-38.88 of the Act, the **3660** General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to **3661** § 23-38.98 of the Act, the College's status as a Covered Institution governed by Subchapter 3 of the Act **3662** may be revoked by an act of the General Assembly (i) if the College fails to meet the requirements of **3663** Subchapter 3 of the Act, or (ii) if the College fails to meet the requirements of this Management **3664** Agreement.

3665 *ARTICLE 4. GENERAL PROVISIONS.*

3666 SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, **3667** shall be construed as conferring any third-party beneficiary status on any person or entity.

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

3673 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June **3674** 30, 2010.

3675 WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of **3676** November, 2005, and shall become effective on the effective date of the legislation enacted into law **3677** providing for the terms of such Agreement.

3678 EXHIBIT G 3679 3680 MANAGEMENT AGREEMENT 3681 BETWEEN 3682 THE COMMONWEALTH OF VIRGINIA 3683 AND 3684 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA 3685 PURSUANT TO 3686 THE RESTRUCTURED HIGHER EDUCATION 3687 FINANCIAL AND ADMINISTRATIVE OPERATIONS 3688 ACT OF 2005 3689 3690 POLICY GOVERNING CAPITAL PROJECTS 3691 3692 THE RECTOR AND VISITORS OF 3693 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA 3694 POLICY GOVERNING CAPITAL PROJECTS 3695 I. PREAMBLE. 3696 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter

3697 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the 3698 College of William & Mary in Virginia may be delegated the authority to establish its own system for 3699 undertaking the implementation of its capital projects. In general, status as a Covered Institution is 3700 designed to replace the post-authorization system of reviews, approvals, policies and procedures carried 3701 out by a variety of central State agencies, and also the traditional pre-authorization approval process 3702 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 3703 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 3704 3705 3706 Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, 3707 Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the 3708 adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state 3709 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.

3714 II. DEFINITIONS.

3715 As used in this policy, the following terms shall have the following meanings, unless the context

3716 requires otherwise:

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

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

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

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

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

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

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

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

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

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

3745 III. SCOPE OF POLICY.

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

3750 This Policy provides guidance for 1) the process for developing one or more capital project programs for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital 3751 3752 projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land 3753 3754 acquisitions, 8) building and land dispositions, 9) project management systems, and $\overline{10}$ reporting 3755 requirements. 3756

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

3757 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the 3758 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 3759 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 3760 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 3761 the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the 3762 3763 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 3764 and procedures. 3765

V. CAPITAL PROGRAM.

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

3774 It shall be College policy that each capital project program shall meet the College's mission and 3775 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College policy that each capital project shall be of a size and scope to provide for the defined program needs, 3776

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designed in accordance with all applicable building codes and handicapped accessibility standards as
well as the College's design guidelines and standards, and costed to reflect current costs and escalated
to the mid-point of anticipated construction.

3780 VI. AUTHORIZATION OF CAPITAL PROJECTS

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

3788 It shall be the policy of the College that the implementation of capital projects shall be carried out
3789 so that the capital project as completed is the capital project approved by the Board for Major Capital
3790 Projects and according to the procedures adopted by the President, acting through his designee, for all
3791 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.

3796 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must 3797 include a statement of urgency if not part of the approved Major Capital Project program.

3798 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 3799 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:

3806 Seeking competition to the maximum practical degree, taking into account the size of the anticipated 3807 procurement, the term of the resulting contract and the likely extent of competition;

3808 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;

3810 Making procurement rules clear in advance of any competition;

3811 Providing access to the College's business to all qualified vendors, firms and contractors, with no
3812 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage
3813 in cooperative procurements and to meet special needs of the College;

3814 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
3815 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
3816 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
3817 necessary to the contractor's normal operations;

3818 Providing for a non-discriminatory procurement process, and including appropriate and lawful
3819 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small
3820 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:

3824 A system of competitive negotiation for Capital Professional Services, including a procedure for
3825 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,
3826 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of
3827 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;
3828 A prequalification procedure for contractors or products;

3829 A procedure for special construction contracting methods, including but not limited to design-build

3830 and construction management contracts; and

3831 *A prompt payment procedure.*

3832 The College also may enter into cooperative arrangements with other private or public health or
3833 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,
3834 in the judgment of the College, the purposes of this Policy will be furthered.

3835 VIII. DESIGN REVIEWS AND CODE APPROVALS.

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

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

3844 The President shall designate a Building Official responsible for building code compliance by either 3845 (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the 3846 Department of General Services, Division of Engineering and Buildings, to perform the Building Official 3847 function. If option (i) is selected, the individual hired as the College Building Official shall be a 3848 full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building 3849 3850 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 3851 3852 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 3853 3854 project and that such capital project has been inspected by the State Fire Marshal or his designee.

3855 When serving as the College Building Official, such individual shall organizationally report directly and 3856 exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill 3857 the code review requirement by maintaining a review unit supported by resources and staff who are 3858 certified by the Department of Housing and Community Development in accordance with § 36-137 of the 3859 Code of Virginia for such purpose and who shall review plans, specifications and documents for 3860 compliance with building codes and standards and perform required inspections of work in progress and 3861 the completed capital project. No individual licensed professional architect or engineer hired or 3862 contracted with to perform these functions shall also perform other building code-related design, 3863 construction, facilities-related project management or facilities management functions for the College on 3864 the same capital project.

IX. ENVIRONMENTAL IMPACT REPORTS.

3866 It shall be the policy of the College to assess the environmental, historic preservation, and 3867 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts 3868 to the extent practicable. The College shall develop a procedure for the preparation and approval of 3869 environmental impact reports for capital projects, in accordance with State environmental, historic 3870 preservation, and conservation requirements generally applicable to capital projects otherwise meeting 3871 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of 3872 \$300,000 or more. 3873

X. BUILDING DEMOLITIONS.

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3874 It shall be the policy of the College to consider the environmental and historical aspects of any 3875 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. 3876 The College shall develop a procedure for the preparation and review of demolition requests, including 3877 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review 3878 Board in accordance with State historic preservation requirements generally applicable to capital 3879 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding 3880 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported 3881 Debt, general laws applicable to State owned property shall apply. 3882

XI. BUILDING OR LAND ACOUISITIONS.

3883 It is the policy of the College that capital projects involving building or land acquisition shall be 3884 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real 3885 property. The President, acting through his designee, shall ensure that the project management system 3886 implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the 3887 3888 3889 acquisition can be made without substantial risk of liability to the College and that the cost of the real 3890 property to be acquired, together with any contemplated development thereof, shall be such that 3891 compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, 3892 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following 3893 specific policies pertaining to the acquisition of buildings or land for capital projects are carried out. 3894

A. Environmental and Land Use Considerations.

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

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and and surrounding parcels, as well as any designation by State or federal agencies of historically or
archeologically significant areas on the land. Nothing herein shall be construed as requiring the
College to comply with local zoning laws and ordinances.

3902 *B.* Infrastructure and Site Condition.

3903 The President, acting through his designee, shall ensure that, in the case of capital projects involving 3904 the acquisition of buildings or land, the project management systems implemented under Section XIII 3905 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 3906 3907 engineer has been engaged by the College to provide an assessment of any environmental conditions on 3908 the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the 3909 building or land; that utilities and other services to the land are adequate or can reasonably be 3910 provided or have been provided in the case of building acquisitions; and that the condition and grade of 3911 the soils have been examined to determine if any conditions exist that would require extraordinary site 3912 work or foundation systems.

3913 *C. Title and Survey.*

3914 A survey shall be prepared for any real property acquired, and an examination of title to the real 3915 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title 3916 insurance shall be procured from a title insurance company authorized to do business in the 3917 Commonwealth. Based upon the survey and title examination or report, the President, acting through 3918 his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed 3919 to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements 3920 or other matters that may have a significant adverse effect upon the College's ability to own, occupy, 3921 convey or develop the real property.

3922 *D. Appraisal.*

3923 An appraisal shall be conducted of the real property to be acquired to determine its fair market
3924 value and the consistency of the fair market value with the price agreed upon by the College.
3925 XII. BUILDING OR LAND DISPOSITIONS.

3926 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or
3927 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
3929 Board of Visitors approval and other approvals in accordance with general law applicable to
3930 State-owned property and with the College's Enabling Legislation.

3931 XIII. PROJECT MANAGEMENT SYSTEMS.

3932 The President, acting through his designee, shall implement one or more systems for the management
3933 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
3935 further delegation of authority as the President deems appropriate.

3936 The project management systems for capital projects shall be designed to ensure that such projects
3937 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely
3938 related subjects such as selection of architects or policies applicable to College buildings and grounds.

3939 The project management systems may include one or more reporting systems applicable to capital
3940 projects whereby College officials responsible for the management of such projects provide appropriate
3941 and timely reports to the President on the status of such projects during construction.

3942 XIV. REPORTING REQUIREMENTS.

3943 In addition to complying with any internal reporting systems contained in the College's project 3944 management systems, as described in Section XIII above, the College shall comply with State reporting 3945 requirements for those Major Capital Projects funded entirely or in part by a general fund 3946 appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project 3947 constructs improvements on land, or renovates property, that originally was acquired or constructed in 3948 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 3949 3950 3951 reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or 3952 renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, 3953 the President, acting through his designee, shall report to the Department of General Services on the 3954 status of such capital projects at the initiation of the project, prior to the commencement of 3955 construction, and at the time of acceptance of any such capital project. 3956

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EXHIBIT H

MANAGEMENT AGREEMENT

3960	DETWEEN
3961	BETWEEN THE COMMONWEALTH OF VIRCINIA
	THE COMMONWEALTH OF VIRGINIA
3962	AND
3963	THE COLLEGE OF WILLIAM & MARY IN VIRGINIA
3964	PURSUANT TO
3965	THE RESTRUCTURED HIGHER EDUCATION
3966	FINANCIAL AND ADMINISTRATIVE OPERATIONS
3967	ACT OF 2005
3968	
3969	POLICY GOVERNING
3970	LEASES OF REAL PROPERTY
3971	
3972	THE RECTOR AND VISITORS OF
3973	THE COLLEGE OF WILLIAM & MARY IN VIRGINIA
3974	POLICY GOVERNING LEASES OF REAL PROPERTY
3975	I. PREAMBLE.
3976	In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases
3977	of Property for certain leases entered into by the College of William & Mary in Virginia, which was
3978	amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital
3979	Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act
3980	(the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that, upon
3981	becoming a Covered Institution, the College may have the authority to establish its own system for the
3982	leasing of real property. The College's system for implementing this authority is to be governed by
3983	policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted
3984	Board of Visitors policies regarding Leases of real property entered into by the College.
3985	This Policy is intended to cover the authority that may be granted to the College pursuant to
3986 3986	
3980 3987	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 Englishing Legislation of defined in § 23.28.80 of the Act, are not affected by this
3988	and the College's Enabling Legislation, as defined in § 23-38.89 of the Act, are not affected by this
3989	Policy.
3990	II. DEFINITIONS.
3991	The following words and terms, when used in this Policy, shall have the following meaning unless
3992	the context clearly indicates otherwise:
3993	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
3994	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
3995	"Board of Visitors" means the Rector and Visitors of the College of William & Mary in Virginia.
3996	"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting
3997	Principles pursuant to the pronouncement of the Financial Accounting Standards Board.
3998	"College" means the College of William & Mary in Virginia, (State Agency 204), and the Virginia
3999	Institute of Marine Science, (State Agency 268).
4000	"Covered Institution" means a public institution of higher education of the Commonwealth of
4001	Virginia that has entered into a Management Agreement with the Commonwealth to be governed by
4002	Subchapter 3 of the Act.
4003	"Expense Lease" means an Operating Lease of real property under the control of another entity to
4004	the College.
4005	"Income Lease" means an Operating Lease of real property under the control of the College to
4006	another entity.
4007	"Lease" or "Leases" means any type of lease involving real property.
4008	"Operating Lease" means any lease involving real property, or improvements thereon, that is not a
4009	Capital Lease.
4010	III. SCOPE OF POLICY.
4011	This Policy provides guidance for the implementation of all College Leases.
4012	IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
4013	The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
4014	proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
4015	of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
4016	to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
4017	the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
4018	while continuing to be fully accountable for such duties and responsibilities, may further delegate the
4019	implementation of those duties and responsibilities pursuant to the College's usual delegation policies
4020	and procedures.

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4021 *V. REQUIREMENTS FOR LEASES.*

4022 A. Factors to Be Considered When Entering into Leases.

4023 All Leases shall be for a purpose consistent with the mission of the College. The decision to enter 4024 into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, 4025 consideration of all costs of occupancy, and a determination that the use of the property to be leased is 4026 necessary and is efficiently planned. Leases shall also conform to the space planning procedures that 4027 may be adopted by the President, acting through his designee, to ensure that the plan for the space to 4028 be leased is consistent with the purpose for which the space is intended.

4029 B. Competition to Be Sought to Maximum Practicable Degree.

4030 Competition shall be sought to the maximum practicable degree for all Leases. The President, acting
4031 through his designee, is authorized to ensure that Leases are procured through competition to the
4032 maximum degree practicable and to determine when, under guidelines that may be developed and
4033 adopted by the President, acting through his designee, it is impractical to procure Leases through
4034 competition.

4035 C. Approval of Form of Lease Required.

4036 The form of Leases entered into by the College shall be approved by the College's legal counsel.
 4037 D. Execution of Leases.

4038 All Leases entered into by the College shall be executed only by those College officers or persons 4039 authorized by the President or as may subsequently be authorized by the Board of Visitors, and subject 4040 to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the 4041 College's Policy Governing Capital Projects adopted by the Board as part of the Management 4042 Agreement between the Commonwealth and the College, no other College approval shall be required for 4043 leases or leasing, nor state approval required except in the case of leases of real property as may be 4044 governed by general state law in accordance with §§ 23-38.109 and 23-38.112 of the Act.

4045 E. Capital Leases.

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4046 The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization **4047** process included in the Policy Governing Capital Projects adopted by the Board as part of the **4048** Management Agreement between the Commonwealth and the College.

4049 F. Compliance with Applicable Law.

4050 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.

4052 *G. Certification of Occupancy.*

4053 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. 4055

EXHIBIT I

4057 4058 MANAGEMENT AGREEMENT 4059 **BETWEEN** 4060 THE COMMONWEALTH OF VIRGINIA 4061 AND 4062 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA 4063 PURSUANT TO 4064 THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT 4065 *OF 2005* 4066 4067 POLICY GOVERNING 4068 INFORMATION TECHNOLOGY 4069 4070 THE RECTOR AND VISITORS OF 4071 THE COLLEGE OF WILLIAM & MARY IN VIRGINIA 4072 POLICY GOVERNING INFORMATION TECHNOLOGY

4073 *I. PREAMBLE.*

4074 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4075 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions 4076 of higher education in the Commonwealth of Virginia that have entered into a Management Agreement 4077 with the Commonwealth "may be exempt from the provisions governing the Virginia Information 4078 Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the 4079 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] 4080 institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the 4081

4082 Code of Virginia. This Information Technology Policy shall become effective upon the effective date of 4083 a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between 4084 the Commonwealth and the College of William & Mary in Virginia that incorporates this Policy.

4085 The Board of Visitors of the College is authorized to adopt this Information Technology Policy 4086 pursuant to § 23-38.111 of the Code of Virginia.

4087 II. DEFINITIONS.

4088 As used in this Information Technology Policy, the following terms have the following meanings, 4089 unless the context requires otherwise:

4090 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 4091 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

4092 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William & 4093 Mary in Virginia.

4094 "College" means the College of William & Mary in Virginia, (State Agency 204), and the Virginia 4095 Institute of Marine Science, (State Agency 268).

"Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the 4096 4097 Code of Virginia as it currently exists and from time to time may be amended.

4098 "Major information technology project" or "major IT project" shall have the same meaning as set 4099 forth in § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended. 4100 "Policy" means this Information Technology Policy adopted by the Board of Visitors.

4101 "State Chief Information Officer" or "State CIO" means the Chief Information Officer of the 4102 Commonwealth of Virginia.

III. SCOPE OF POLICY. 4103

4104 This Policy is intended to cover and implement the authority that may be granted to the College 4105 pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect any other 4106 powers and authorities granted to the College pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the College's enabling legislation as that term is 4107 defined in § 23-38.89 of the Act. 4108

4109 This Policy shall govern the College's information technology strategic planning, expenditure 4110 reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College. Upon the effective date of a Management 4111 Agreement between the Commonwealth and the College, as authorized by subsection D of § 23-38.88 4112 4113 and § 23-38.111, therefore, the College shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies 4114 4115 Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 4116 of Title 2.2 of the Code of Virginia, that otherwise would govern the College's information technology 4117 strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College; provided, 4118 however, that the College still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) 4119 (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 4120 4121 4122 public institutions of higher education of the Commonwealth and that do not govern information 4123 technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, 4124 architecture, ongoing operations, security, and audits within, by, or on behalf of the College.

4125 The procurement of information technology and telecommunications goods and services, including 4126 automated data processing hardware and software, shall be governed by the Policy Governing the 4127 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 4128 approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and 4129 Construction that are incorporated in and attached to that Policy.

4130 IV. GENERAL PROVISIONS.

4131

A. Board of Visitors Accountability and Delegation of Authority.

4132 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the 4133 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 4134 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 4135 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 4136 the duties and responsibilities set forth in this Policy to a person or persons within the College, who, 4137 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 4138 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 4139 and procedures. 4140

B. Strategic Planning.

4141 The President shall be responsible for overall IT strategic planning at the College, which shall be linked to and in support of the College's overall strategic plan. 4142

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4143 At least 45 days prior to each fiscal year, the President shall make available the College's IT 4144 strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to 4145 the consistency of the College's plan with the intent of the currently published overall five-year IT 4146 strategic plan for the Commonwealth developed by the State CIO pursuant to § 2.2-2007 of the Code of 4147 Virginia, and into which the College's plan is to be incorporated. 4148 C. Expenditure Reporting and Budgeting. 4149 The President shall approve and be responsible for overall IT budgeting and investments at the 4150 College. The College's IT budget and investments shall be linked to and in support of the College's IT 4151 strategic plan, and shall be consistent with general College policies, the Board-approved annual 4152 operating budget, and other Board approvals for certain procurements. 4153 By October 1 of each year, the President shall make available to the State CIO and the Information 4154 Technology Investment Board a report on the previous fiscal year's IT expenditures. 4155 The College shall be specifically exempt from: 4156 Subdivision A 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget 4157 requests), as it currently exists and from time to time may be amended; 4158 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund), as 4159 they currently exist and from time to time may be amended; and 4160 Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting 4161 and budgeting, as it currently exists and from time to time may be amended. 4162 D. Project Management. 4163 Pursuant to § 23-38.111 of the Act, the Board shall adopt the project management policies, 4164 standards, and guidelines developed by the Commonwealth or those based upon industry best practices 4165 for project management as defined by leading IT consulting firms, leading software development firms, 4166 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 4167 4168 available to the Information Technology Investment Board. 4169 The President, acting through his designee, shall oversee the management of all College IT projects. 4170 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 4171 4172 development of IT services for students, faculty, staff, and patients. Day-to-day management of projects 4173 shall be the responsibility of appointed project directors and shall be in accord with the project 4174 management policies, standards, and guidelines adopted by the Board, as amended and revised from 4175 time to time. 4176 On a quarterly basis, the President, acting through his designee, shall report to the Information 4177 Technology Investment Board on the budget, schedule, and overall status of the College's major IT 4178 projects. This requirement shall not apply to research projects, research initiatives, or instructional 4179 programs. 4180 The President shall be responsible for decisions to substantially alter a project's scope, budget, or 4181 schedule after initial approval. 4182 The College shall be specifically exempt from: 4183 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project 4184 management), as it currently exists and from time to time may be amended; 4185 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management), 4186 as they currently exist and from time to time may be amended; and 4187 Any other substantially similar provision of the Code of Virginia governing IT project management, 4188 as it currently exists or from time to time may be amended. 4189 The State CIO and the Information Technology Investment Board shall continue to have the authority 4190 regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of 4191 § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall 4192 continue to provide the College with reasonable notice of, and a reasonable opportunity to correct, any 4193 *identified problems before a project is terminated.* 4194 E. Infrastructure, Architecture, Ongoing Operations, and Security. 4195 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines 4196 related to IT infrastructure, architecture, ongoing operations, and security developed by the 4197 Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific 4198 Copies of the policies shall be made available to the Information circumstances of the College. 4199 Technology Investment Board. 4200 The President, acting through his designee, shall be responsible for implementing such policies, 4201 standards, and guidelines adopted by the Board, as amended and revised from time to time.

4202 For purposes of implementing this Policy, the President shall appoint an existing College employee 4203 to serve as a liaison between the College and the State CIO.

4204	F. Audits.
4205	Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines
4205	developed by the Commonwealth or those based upon industry best practices for project auditing as
4200	
	defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing
4208	association, appropriately tailored to the specific circumstances of the College, which provide for
4209	Independent Validation and Verification (IV&V) of the College's major IT projects. Copies of the
4210	policies, standards, and guidelines, as amended and revised from time to time, shall be made available
4211	to the Information Technology Investment Board.
4212	Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure,
4213	architecture, ongoing operations, and security, shall also be the responsibility of the College's Internal
4214	Audit Department and the Auditor of Public Accounts.
4215	
4216	EXHIBIT J
4217	
4218	MANAGEMENT AGREEMENT
4219	BETWEEN
4220	THE COMMONWEALTH OF VIRGINIA
4221	AND
4222	THE COLLEGE OF WILLIAM & MARY IN VIRGINIA
4223	PURSUANT TO
4224	THE RESTRUCTURED HIGHER EDUCATION
4225	FINANCIAL AND ADMINISTRATIVE OPERATIONS
4226	ACT OF 2005
4227	
4228	POLICY GOVERNING
4229	THE PROCUREMENT OF GOODS, SERVICES,
4230	INSURANCE, AND CONSTRUCTION AND
4231	THE DISPOSITION OF SURPLUS MATERIALS
4232	
4233	THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM & MARY
4234	POLICY GOVERNING THE PROCUREMENT OF
4235	GOODS, SERVICES, INSURANCE AND CONSTRUCTION
4236	AND THE DISPOSITION OF SURPLUS MATERIALS
4237	I. PREAMBLE.
4238	A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act
4239	(the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides that the
4240	College of William & Mary in Virginia, upon becoming a Covered Institution, shall be authorized to
4241	establish its own system for the procurement of goods, services, insurance, and construction, and for the
4242	independent disposition of surplus materials by public or private transaction.
4243	B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of
4244	Visitors for the procurement of goods, services, insurance, and construction, and the disposition of
4245	surplus materials. The provisions of this Policy set forth below, together with the Rules Governing
4246	Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment I,
4247	constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods,
4248	services, insurance, and construction, and the disposition of surplus materials by the College.
4249	C. This Policy is intended to cover the authority that may be granted to the College pursuant to
4250	Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to any other
4251	sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the
4252	College's Enabling Legislation are not affected by this Policy.
4253	II. DEFINITIONS.
4254	As used in this Policy, the following terms shall have the following meanings, unless the context
4255	requires otherwise:
4256	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
4257	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
4258	"Agreement" means "Management Agreement."
4259	"Board of Visitors" means the Rector and Visitors of the College of William & Mary in Virginia.
4260	"College" means the College of William & Mary in Virginia, (State Agency 204), and the Virginia
4261	Institute of Marine Science, (State Agency 268).
4262	"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
4263	public institution of higher education of the Commonwealth of Virginia that has entered into a
4264	Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of

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4265 the Act.

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

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

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

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

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

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

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

4283 ÎII. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

4284 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the 4285 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 4286 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 4287 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 4288 the duties and responsibilities set forth in this Policy to a person or persons within the College, who, 4289 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 4290 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 4291 and procedures. 4292

IV. GENERAL PROVISIONS.

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

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

4301 This Policy shall be effective on the Effective Date of the College's initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President to 4302 4303 implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors 4304 affecting procurements at the College, including policies regarding the nature and amounts of 4305 procurements that may be undertaken without the approval of the Board of Visitors, or of the President. 4306 B. Scope and Purpose of College Procurement Policies.

4307 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be 4308 the policy of the College that procurements conducted by the College result in the purchase of high 4309 quality goods and services at reasonable prices, and that the College be free, to the maximum extent 4310 permitted by law and this Policy, from constraining policies that hinder the ability of the College to do 4311 business in a competitive environment. This Policy, together with the Rules Governing Procurement of 4312 Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all 4313 procurements undertaken by the College, regardless of the source of funds. 4314

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

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

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

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

4326 Consistent with this commitment, the College:

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

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

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

4338 E. Implementation.

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

4357 V. COLLEGE PROCUREMENT POLICIES. 4358

A. General Competitive Principles.

- 4359 In connection with College procurements and the processes leading to award of contracts for goods, 4360 services, insurance, and construction, the College is committed to:
- Seeking competition to the maximum practical degree, taking into account the size of the anticipated 4361 4362 procurement, the term of the resulting contract and the likely extent of competition;
- 4363 Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or 4364 the appearance of any impropriety;
- 4365 Making procurement rules clear in advance of any competition;
- 4366 Providing access to the College's business to all qualified vendors, firms and contractors, with no 4367 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage 4368 in cooperative procurements and to meet special needs of the College;

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

4371 Providing for the free exchange of information between the College, vendors, firms or contractors 4372 concerning the goods or services sought and offered while preserving the confidentiality of proprietary 4373 information. 4374

B. Access to Records.

4375 Procurement records shall be available to citizens or to interested persons, firms or corporations in 4376 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to 4377 4378 § 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia 4379 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act. 4380

C. Cooperative Procurements and Alliances.

4381 In circumstances where the College determines and documents that statewide contracts for goods and 4382 services, including information technology and telecommunications goods and services, do not provide 4383 goods and services to the College that meet its business goals and objectives, the College is authorized 4384 to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable 4385 organizations, health care provider alliances and purchasing organizations, so long as the resulting 4386

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4387 contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing 4388 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 4389 and the purposes of this Policy are furthered. In the event the College engages in a cooperative 4390 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, 4391 4392 Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by 4393 other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the 4394 above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's 4395 electronic procurement system, including the requirement for payment of applicable fees. By October 1 4396 of each year, the President, or his designee, shall make available to the Secretaries of Administration 4397 and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts 4398 a list of all cooperative contracts and alliances entered into or used during the prior fiscal year. 4399 D. Training; Ethics in Contracting.

4400 The President, acting through his designee, shall take all necessary and reasonable steps to assure 4401 (i) that all College officials responsible for and engaged in procurements authorized by the Act and this 4402 Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public 4403 Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 4404 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any 4405 procedures adopted by the President to implement this Policy are responsible for and engaged in such 4406 procurements, and (iii) that compliance with the Act and this Policy are achieved.

4407 The College shall maintain an ongoing program to provide professional development opportunities to 4408 its buying staff and to provide methods training to internal staff who are engaged in placing 4409 decentralized small purchase transactions.

4410 E. Ethics and College Procurements.

4411 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 4412 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 4413 4414 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 4415 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et 4416 seq.) of Chapter 12 of Title 18.2. 4417

VI. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.

4418 The policy and procedures for disposal for surplus materials shall provide for the sale, 4419 environmentally-appropriate disposal, or recycling of surplus materials by the College and the retention 4420 of the resulting proceeds by the College.

4421 VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND 4422 PROCEDURES.

4423 The President shall adopt one or more comprehensive sets of specific procurement policies and 4424 procedures for the College, which, in addition to the Rules, implement applicable provisions of law and 4425 this Policy. College procurements shall be carried out in accordance with this Policy, the Rules, and 4426 any implementing policies and procedures adopted by the College. The implementing policies and 4427 procedures (i) shall include the delegation of procurement authority by the Board to appropriate 4428 College officials who shall oversee College procurements of goods, services, insurance, and 4429 construction, including a grant of authority to such officials to engage in further delegation of authority 4430 as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set 4431 forth in Part V above.

4432 Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall 4433 become effective on the Effective Date of the College's initial Management Agreement with the 4434 Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the 4435 College on behalf of the College for goods, services, insurance, and construction. This Policy, the 4436 Rules, and any implementing policies and procedures adopted by the College shall not affect existing 4437 contracts already in effect.

4438 The Rules and College implementing policies and procedures for all College procurements of goods, 4439 services, insurance, and construction, and the disposition of surplus property shall be substantially 4440 consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education 4441 and their Vendors in their form as of the effective date of this Policy and as amended or changed in the 4442 future, and with College procedures specific to the Acquisition of Goods and Services. The Rules and 4443 College implementing policies and procedures shall implement a system of competitive negotiation, and 4444 competitive sealed bidding when appropriate, for goods, services, including professional services as 4445 defined in the Rules, insurance, and construction.

4446 VIII. REOUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES. 4447 A. Protests, Appeals and Debarment.

4448 The Rules and College implementing policies and procedures for procurements other than capital 4449 outlay shall include a process or processes for an administrative appeal by vendors, firms or 4450 Protests and appeals may challenge determinations of vendor, firm or contractor contractors. 4451 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 4452 4453 action challenged or, where a contract already being performed is declared void, compensation for the 4454 cost of performance up to the time of such declaration. The Rules and College implementing policies 4455 and procedures also may establish the basis and process for debarment of any vendor, firm or 4456 contractor. 4457

B. Prompt Payment of Contractors and Subcontractors.

4458 The Rules and College implementing policies and procedures shall include provisions related to 4459 prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the 4460 lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The 4461 payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or 4462 4463 the date established by the contract. All contracts also shall require prompt payment of subcontractors 4464 by the general contractor, upon receipt of payment by the College. 4465

C. Types of Procurements.

4466 The Rules and College implementing policies and procedures shall implement a system of competitive 4467 negotiation for professional services, as defined in the Rules, and shall implement purchasing 4468 procedures developed to maximize competition given the size and duration of the contract, and the needs 4469 of the College. Such policies and procedures may include special provisions for procurements such as 4470 emergency procurements, sole source procurements, brand name procurements, small purchases, 4471 procurements in which only one qualified vendor responds, and others. 4472

D. Approval and Public Notice of Procurements.

4473 The Rules and College implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, 4474 4475 given the size and nature of the need and the applicability of any Virginia Freedom of Information Act 4476 exemption. 4477

E. Administration of Contracts.

4478 The Rules and College implementing policies and procedures shall contain provisions related to the 4479 administration of contracts, including contract claims, modifications, extensions and assignments. 4480

F. Non-Discrimination.

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

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ATTACHMENT 1

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

Restructured Higher Education Financial and Administrative Operations Act,

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

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

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

4506 § 2. Scope of Procurement Authority. - Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the 4507 Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the 4508

4509 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 4510 outlay-related procurement and information technology-related procurement, that Institutions are 4511 authorized to exercise pursuant to Subchapter 3 of the Restructuring Act. 4512

4513 § 3. Competition is the Priority. - To the end that the Institution shall obtain high quality goods and 4514 services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial 4515 manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have 4516 access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the 4517 intent of the governing body of the Institution that competition be sought to the maximum feasible 4518 degree, that procurement procedures involve openness and administrative efficiency, that individual 4519 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 4520 4521 needs of the purchasing body rather than being drawn to favor a particular vendor, and that the 4522 purchaser and vendor freely exchange information concerning what is sought to be procured and what 4523 is offered. The Institution may consider best value concepts when procuring goods and nonprofessional 4524 services, but not construction or professional services. Professional services will be procured using a 4525 qualification-based selection process. The criteria, factors, and basis for consideration of best value and 4526 the process for the consideration of best value shall be as stated in the procurement solicitation.

4527 § 4. Definitions. - As used in these Rules:

4528 "Affiliate" means an individual or business that controls, is controlled by, or is under common 4529 control with another individual or business. A person controls an entity if the person owns, directly or 4530 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition 4531 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 4532 members of the board of directors or similar governing body of the business or (ii) is convertible into, 4533 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A 4534 general partnership interest shall be deemed to be a voting security.

4535 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 4536 and various elements of required services that in total are optimal relative to the Institution's needs.

4537 "Business" means any type of corporation, partnership, limited liability company, association, or sole 4538 proprietorship operated for profit. 4539

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

4540 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 4541 procured, specifying the factors that will be used in evaluating the proposal and containing or 4542 incorporating by reference the other applicable contractual terms and conditions, including any unique 4543 capabilities or qualifications that will be required of the contractor.

4544 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 4545 proposals by publication in a newspaper or newspapers of general circulation in the area in which the 4546 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 4547 can be reasonably anticipated to submit proposals in response to the particular request. Public notice 4548 also shall be published on the Department of General Services' central electronic procurement website 4549 and may be published on other appropriate websites. In addition, proposals may be solicited directly 4550 from potential contractors.

4551 3. a. Procurement of professional services. The procurement of professional services for capital 4552 projects shall be conducted using a qualification-based selection process. The Institution shall engage 4553 in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on 4554 the basis of initial responses and with emphasis on professional competence, to provide the required 4555 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 4556 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 4557 4558 offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may 4559 discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and 4560 where appropriate, nonbinding estimates of price for services. Proprietary information from competing 4561 offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined 4562 in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all 4563 information developed in the selection process to this point, the Institution shall select in the order of 4564 preference two or more offerors whose professional qualifications and proposed services are deemed 4565 most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a 4566 contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair 4567 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 4568 so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution 4569

4570 determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror 4571 is clearly more highly qualified and suitable than the others under consideration, a contract may be 4572 negotiated and awarded to that offeror.

4573 A contract for architectural or professional engineering services relating to construction projects may 4574 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience 4575 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 4576 4577 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the 4578 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 4579 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 4580 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 4581 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 4582 inspection work regarding construction of infrastructure projects may be negotiated and awarded based 4583 4584 on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier 4585 phases is necessary to provide information critical to the negotiation of a fair and reasonable price for 4586 succeeding phases. Prior to the procurement of any such contract, the Institution shall state the 4587 anticipated intended total scope of the project and determine in writing that the nature of the work is 4588 such that the best interests of such Institution require awarding the contract.

4589 b. Procurement of other than professional services. Selection shall be made of two or more offerors 4590 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 4591 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 4592 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, 4593 but need not be the sole determining factor. After negotiations have been conducted with each offeror 4594 so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 4595 shall award the contract to that offeror. When the terms and conditions of multiple awards are so 4596 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 4597 Institution determine in writing and in its sole discretion that only one offeror has made the best 4598 proposal, a contract may be negotiated and awarded to that offeror.

4599 "Competitive sealed bidding" is a method of contractor selection, other than for professional 4600 services, which includes the following elements:

4601 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 4602 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided 4603 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 4604 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 4605 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 4606 4607 qualified under the criteria set forth in the first solicitation.

4608 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 4609 publication on the Department of General Services' central electronic procurement website. Public 4610 notice also may be published in a newspaper of general circulation or on other appropriate websites, or 4611 both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations 4612 shall include businesses selected from a list made available by the Department of Minority Business 4613 Enterprise. 4614

3. Public opening and announcement of all bids received.

4615 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 4616 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 4617 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, 4618 which are helpful in determining acceptability.

4619 Award to the lowest responsive and responsible bidder. When the terms and conditions of 5. 4620 multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

4621 "Construction" means building, altering, repairing, improving or demolishing any structure, building 4622 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

4623 "Construction management contract" means a contract in which a party is retained by the owner to 4624 coordinate and administer contracts for construction services for the benefit of the owner, and may also 4625 include, if provided in the contract, the furnishing of construction services to the owner.

4626 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 4627 agreement with the Commonwealth of Virginia, a public institution of higher education of the 4628 Commonwealth that has entered into a management agreement with the Commonwealth to be governed 4629 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 4630

4631 party contracting with the Institution agrees to both design and build the structure, roadway or other 4632 item specified in the contract.

4633 "Goods" means all material, equipment, supplies, and printing, including information technology and 4634 telecommunications goods such as automated data processing hardware and software.

4635 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of 4636 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or 4637 delivery schedule for the goods, services or construction being procured.

4638 "Multiphase professional services contract" means a contract for the providing of professional 4639 services where the total scope of work of the second or subsequent phase of the contract cannot be 4640 specified without the results of the first or prior phase of the contract.

4641 "Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall 4642 4643 4644 still apply to professional services for such small construction projects.

4645 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, 4646 at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the 4647 sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured 4648 under the contract, and who at such time is eligible and qualified in all respects to perform that 4649 contract, and who would have been eligible and qualified to submit a bid or proposal had the contract 4650 been procured through competitive sealed bidding or competitive negotiation.

4651 "Professional services" means work performed by an independent contractor within the scope of the 4652 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 4653 dentistry, medicine, optometry, pharmacy or professional engineering.

4654 "Public body" means any legislative, executive or judicial body, agency, office, department, authority, 4655 post, commission, committee, institution, board or political subdivision created by law to exercise some 4656 sovereign power or to perform some governmental duty, and empowered by law to undertake the 4657 activities described in these Rules.

4658 "Public contract" means an agreement between the Institution and a nongovernmental source that is 4659 enforceable in a court of law.

4660 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform 4661 fully the contract requirements and the moral and business integrity and reliability that will assure good 4662 faith performance, and who has been prequalified, if required.

4663 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects 4664 to the Invitation to Bid.

4665 "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. 4666

"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction 4667 4668 adopted by the governing body of the Covered Institution.

4669 "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 4670 4671 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 4672 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 4673 established for bid opening.

4674 "Services" means any work performed by an independent contractor wherein the service rendered 4675 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials 4676 and supplies.

4677 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working 4678 environment and individual goals that utilizes work experience and related services for assisting the 4679 handicapped person to progress toward normal living and a productive vocational status.

4680 § 5. Methods of procurement. -

4681 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 4682 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, 4683 or competitive negotiation as provided in this section, unless otherwise authorized by law.

4684 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 4685 shall be used for design services. 4686

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

4687 Construction may be procured only by competitive sealed bidding, except that competitive D. 4688 negotiation may be used in the following instances upon a determination made in advance by the 4689 Institution and set forth in writing that competitive sealed bidding is either not practicable or not 4690 fiscally advantageous to the public, which writing shall document the basis for this determination:

4691 1. By the Institution on a fixed price design-build basis or construction management basis under

4692 § 7;

4693

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

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

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

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

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

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

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

4731 J. The purchase of goods or nonprofessional services, but not construction or professional services, 4732 may be made by reverse auctioning. 4733

§ 6. Cooperative procurement. -

4734 In circumstances where the Institution determines and documents that statewide contracts for Α. 4735 goods and services, including information technology and telecommunications goods and services, do 4736 not provide goods and services to the Institution that meet its business goals and objectives, the 4737 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement 4738 arrangement on behalf of or in conjunction with public bodies, public or private health or educational 4739 institutions, other public or private organizations or entities, including public-private partnerships, 4740 charitable organizations, health care provider alliances or purchasing organizations or entities, or with 4741 public agencies or institutions or group purchasing organizations of the several states, territories of the 4742 United States, or the District of Columbia, for the purpose of combining requirements to effect cost 4743 savings or reduce administrative expense in any acquisition of goods and services, other than 4744 professional services. The Institution may purchase from any authority, department, agency, institution, 4745 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not 4746 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to 4747 bid specified that the procurement was being conducted on behalf of other public bodies. In such 4748 instances, deviation from the procurement procedures set forth in these Rules and the administrative 4749 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of 4750 the above, use of cooperative contracts shall conform to the business requirements of the 4751 Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee 4752

4753 that will allow for participation in any such arrangement.

4754 In circumstances where statewide contracts for goods and services, including information *B*. 4755 technology and telecommunications goods and services, do not provide goods and services to meet the 4756 Institution's business goals and objectives, and as authorized by the United States Congress and 4757 consistent with applicable federal regulations, and provided the terms of the contract permit such 4758 purchases:

4759 1. The Institution may purchase goods and nonprofessional services, from a United States General 4760 Services Administration contract or a contract awarded by any other agency of the United States 4761 government; and

The Institution may purchase telecommunications and information technology goods and 4762 2. nonprofessional services from a United States General Services Administration contract or a contract 4763 4764 awarded by any other agency of the United States government.

4765 § 7. Design-build or construction management contracts authorized. -

4766 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 4767 4768 section.

4769 B. Procurement of construction by the design-build or construction management method shall be a 4770 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 4771 qualifications. Based upon the information submitted and any other relevant information which the 4772 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 4773 selected by the Commonwealth and requested to submit proposals.

4774 § 8. Modification of the contract. -

4775 A. A contract awarded by the Institution may include provisions for modification of the contract 4776 during performance, but no fixed-price contract may be increased by more than 25% of the amount of 4777 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's 4778 president or his designee. In no event may the amount of any contract, without adequate consideration, 4779 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 4780 an error in its bid or offer.

4781 B. The Institution may extend the term of an existing contract for services to allow completion of 4782 any work undertaken but not completed during the original term of the contract.

4783 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 4784 *modifications.* 4785

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

4786 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 4787 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis 4788 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 4789 Institution shall include businesses selected from a list made available by the Department of Minority 4790 Business Enterprise.

4791 B. The Institution shall establish programs consistent with this section to facilitate the participation 4792 of small businesses and businesses owned by women and minorities in procurement transactions. The 4793 programs established shall be in writing and shall include cooperation with the Department of Minority 4794 Business Enterprise, the United States Small Business Administration, and other public or private 4795 agencies. The Institution shall submit annual progress reports on minority business procurement to the 4796 Department of Minority Business Enterprise.

4797 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 4798 4799 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 4800 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 4801 law.

4802 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 4803 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 4804 that employing ex-offenders on the specific contract is not in its best interest.

4805 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

4806 The Institution shall include in every contract of more than \$10,000 the following provisions:

4807 1. During the performance of this contract, the contractor agrees as follows:

4808 a. The contractor will not discriminate against any employee or applicant for employment because 4809 of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law 4810 relating to discrimination in employment, except where there is a bona fide occupational qualification 4811 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 4812 provisions of this nondiscrimination clause. 4813

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4814 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 4815 contractor, will state that such contractor is an equal opportunity employer.

4816 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 4817 shall be deemed sufficient for the purpose of meeting the requirements of this section.

4818 The contractor will include the provisions of the foregoing paragraphs a, b and c in every 2. 4819 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 4820 subcontractor or vendor.

4821 § 11. Drug-free workplace to be maintained by contractor; required contract provisions.- The 4822 Institution shall include in every contract over \$10,000 the following provisions:

4823 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace 4824 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 4825 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 4826 4827 workplace and specifying the actions that will be taken against employees for violations of such 4828 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 4829 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the 4830 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 4831 binding upon each subcontractor or vendor.

4832 For the purposes of this section, "drug-free workplace" means a site for the "performance of work 4833 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 4834 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 4835 dispensation, possession or use of any controlled substance or marijuana during the performance of the 4836 contract.

4837 § 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a 4838 certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or 4839 manufacturer named and shall be deemed to convey the general style, type, character, and quality of the 4840 article desired. Any article that the Institution in its sole discretion determines to be the equal of that 4841 specified, considering quality, workmanship, economy of operation, and suitability for the purpose 4842 intended, shall be accepted.

4843 § 13. Comments concerning specifications. - The Institution shall establish procedures whereby 4844 comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal 4845 can be received and considered prior to the time set for receipt of bids or proposals or award of the 4846 contract. 4847

§ 14. Prequalification generally; prequalification for construction. -

4848 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 4849 4850 4851 implementation to allow potential contractors a fair opportunity to complete the process.

4852 B. Any prequalification of prospective contractors for construction by the Institution shall be 4853 pursuant to a prequalification process for construction projects adopted by the Institution. The process 4854 shall be consistent with the provisions of this section.

4855 The application form used in such process shall set forth the criteria upon which the qualifications 4856 of prospective contractors will be evaluated. The application form shall request of prospective 4857 contractors only such information as is appropriate for an objective evaluation of all prospective 4858 contractors pursuant to such criteria. The form shall allow the prospective contractor seeking 4859 prequalification to request, by checking the appropriate box, that all information voluntarily submitted 4860 by the contractor pursuant to this subsection shall be considered a trade secret or proprietary 4861 information subject to the provisions of subsection D of § 34 of these Rules.

4862 In all instances in which the Institution requires pregualification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of 4863 4864 prequalification applications. The deadline for submission shall be sufficiently in advance of the date 4865 set for the submission of bids for such construction so as to allow the procedures set forth in this 4866 subsection to be accomplished.

4867 At least 30 days prior to the date established for submission of bids or proposals under the 4868 procurement of the contract for which the prequalification applies, the Institution shall advise in writing 4869 each contractor who submitted an application whether that contractor has been prequalified. In the 4870 event that a contractor is denied prequalification, the written notification to the contractor shall state 4871 the reasons for the denial of prequalification and the factual basis of such reasons.

4872 A decision by the Institution denying prequalification under the provisions of this subsection shall be 4873 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

4874 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the

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4875 following:

4876 1. The contractor does not have sufficient financial ability to perform the contract that would result 4877 from such procurement. If a bond is required to ensure performance of a contract, evidence that the 4878 contractor can acquire a surety bond from a corporation included on the United States Treasury list of 4879 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to 4880 establish the financial ability of the contractor to perform the contract resulting from such procurement; 4881 The contractor does not have appropriate experience to perform the construction project in 2. 4882 question;

4883 3. The contractor or any officer, director or owner thereof has had judgments entered against him 4884 within the past 10 years for the breach of contracts for governmental or nongovernmental construction, 4885 including, but not limited to, design-build or construction management;

4886 4. The contractor has been in substantial noncompliance with the terms and conditions of prior 4887 construction contracts with the Institution without good cause. If the Institution has not contracted with 4888 a contractor in any prior construction contracts, the Institution may deny prequalification if the 4889 contractor has been in substantial noncompliance with the terms and conditions of comparable 4890 construction contracts with another public body without good cause. The Institution may not utilize this 4891 provision to deny prequalification unless the facts underlying such substantial noncompliance were 4892 documented in writing in the prior construction project file and such information relating thereto given 4893 to the contractor at that time, with the opportunity to respond;

4894 5. The contractor or any officer, director, owner, project manager, procurement manager or chief 4895 financial official thereof has been convicted within the past 10 years of a crime related to governmental 4896 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 4897 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental 4898 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 4899 substantially similar law of the United States or another state;

4900 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an 4901 established debarment procedure from bidding or contracting by any public body, agency of another 4902 state or agency of the federal government; and

4903 7. The contractor failed to provide to the Institution in a timely manner any information requested 4904 by the Institution relevant to subdivisions 1 through 6 of this subsection.

4905 § 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid 4906 from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest 4907 responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to 4908 obtain a contract price within available funds. However, the negotiation may be undertaken only under 4909 conditions and procedures described in writing and approved by the Institution prior to issuance of the 4910 Invitation to Bid and summarized therein. 4911

§ 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 4912 4913 4914 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 4915 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. 4916

4917 B. The Institution may waive informalities in bids.

4918 § 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no 4919 insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus 4920 lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to 4921 the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall 4922 preclude the Institution from debarring a prospective insurer pursuant to § 18.

4923 § 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of 4924 supplies, services, insurance or construction, for specified periods of time. Any debarment procedure 4925 shall be established in writing by the Institution. Any debarment procedure may provide for debarment 4926 on the basis of a contractor's unsatisfactory performance for the Institution. 4927

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

4928 A. The Institution may implement a purchase program for recycled goods and may coordinate its 4929 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 4930 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

4931 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets 4932 Development Council, shall advise the Institution concerning the designation of recycled goods. 4933

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

4934 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or 4935 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be

4936 decided by lot.

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

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

4943 § 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract 4944 for coal to be purchased for use in the Institution with state funds, the Institution shall procure using 4945 competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering 4946 coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the 4947 low responsive and responsible bidder offering coal mined elsewhere. 4948

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

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

4954 For purposes of this section, recycled paper and paper products means any paper or paper 4955 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247. 4956

§ 23. Withdrawal of bid due to error. -

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

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

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

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

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

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

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

4996 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify

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- **4997** 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.
- **4999** § 24. Contract Pricing Arrangements. -

5000 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 5001 basis that is not prohibited by these Rules.

5002 B. Except in case of emergency affecting the public health, safety or welfare, no public contract 5003 shall be awarded on the basis of cost plus a percentage of cost.

5004 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis 5005 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in 5006 whole or part as a percentage of such claims, shall not be prohibited by this section.

5007 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

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

5013 B. The Department of General Services shall provide the form to the Institution. Failure of the 5014 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 5015 of subsection A.

5016 *C.* No subcontractor shall perform any work on a construction project of the Institution unless he 5017 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage 5018 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 5019 Virginia.

5020 § 26. Retainage on construction contracts. -

5021 A. In any contract issued by the Institution for construction that provides for progress payments in
5022 installments based upon an estimated percentage of completion, the contractor shall be paid at least
5023 95% of the earned sum when payment is due, with no more than 5% being retained to ensure faithful
5024 performance of the contract. All amounts withheld may be included in the final payment.

5025 B. Any subcontract for a public project that provides for similar progress payments shall be subject 5026 to the provisions of this section.

5027 § 27. Public construction contract provisions barring damages for unreasonable delays declared **5028** 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.

5034 B. Subsection A shall not be construed to render void any provision of a public construction 5035 contract awarded by the Institution that:

5036 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the 5037 contractor, or its subcontractors, agents or employees;

- 5038 2. Requires notice of any delay by the party claiming the delay;
- 5039 3. Provides for liquidated damages for delay; or
- **5040** *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.

5047 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 5048 the contractor in the performance of work under any public construction contract for the Institution, it 5049 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to 5050 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 5051 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 5052 determined through litigation or arbitration to have been made in bad faith.

5053 § 28. Bid bonds. -

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

5058 exceed 5% of the amount bid.

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

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

5063 § 29. Performance and payment bonds. -

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

5069 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 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 5070 5071 5072 a form and amount satisfactory to the Institution.

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

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

5080 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 5081 that are authorized to do business in Virginia. 5082

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

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

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

5086 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish 5087 a payment bond with surety thereon in the sum of the full amount of the contract with such 5088 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are 5089 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the 5090 work provided for in the subcontract. 5091

§ 30. Alternative forms of security. -

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

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

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

5102 § 32. Action on performance bond. - No action against the surety on a performance bond shall be 5103 brought by the Institution unless brought within one year after (i) completion of the contract, including 5104 the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty 5105 that gave rise to the action. 5106

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

5107 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 5108 material in accordance with the contract documents in furtherance of the work provided in any contract 5109 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the 5110 5111 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 5112 5113 to the action.

5114 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 5115 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the 5116 day on which the claimant performed the last of the labor or furnished the last of the materials for 5117 which he claims payment, stating with substantial accuracy the amount claimed and the name of the 5118

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5119 person for whom the work was performed or to whom the material was furnished. Notice to the 5120 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to 5121 such contractor at any place where his office is regularly maintained for the transaction of business.

5122 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not 5123 be subject to the time limitations stated in this subsection.

5124 C. Any action on a payment bond shall be brought within one year after the day on which the 5125 person bringing such action last performed labor or last furnished or supplied materials.

5126 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 5127 it is in writing, signed by the person whose right is waived, and executed after such person has 5128 performed labor or furnished material in accordance with the contract documents.

5129 § 34. Public inspection of certain records. -

5130 A. Except as provided in this section, all proceedings, records, contracts and other public records 5131 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 5132 5133 seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 5134 5135 shall not be open to public inspection.

5136 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 5137 bid records within a reasonable time after the opening of all bids but prior to award, except in the 5138 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, 5139 bid records shall be open to public inspection only after award of the contract.

5140 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect 5141 proposal records within a reasonable time after the evaluation and negotiations of proposals are 5142 completed but prior to award, except in the event that the Institution decides not to accept any of the 5143 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection 5144 only after award of the contract.

5145 Any inspection of procurement transaction records under this section shall be subject to Е. 5146 reasonable restrictions to ensure the security and integrity of the records.

5147 Trade secrets or proprietary information submitted by a bidder, offeror or contractor in F. 5148 connection with a procurement transaction or prequalification application submitted pursuant to 5149 subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et 5150 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to 5151 or upon submission of the data or other materials, (ii) identify the data or other materials to be 5152 protected, and (iii) state the reasons why protection is necessary. 5153

§ 35. Exemption for certain transactions. -

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

5155 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 5156 5157 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1. 5158

5159 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the 5160 Institution. However, such purchase procedures shall provide for competition where practicable.

5161 Procurement of any construction or planning and design services for construction by the 3. Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is 5162 5163 obligated to conform to procurement procedures that are established by federal statutes or regulations, 5164 whether or not those federal procedures are in conformance with the provisions of these Rules. 5165

4. The University of Virginia Medical Center.

5166 The purchase of goods and services by the Institution when such purchases are made under a 5. remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules. 5167

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 5168 5169 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 5170 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 5171 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 5172 of the Institution's President or his designee that acceptance of the grant or contract funds under the 5173 applicable conditions is in the public interest. Such determination shall state the specific provision of 5174 these Rules in conflict with the conditions of the grant or contract.

5175 *§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -*

5176 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into 5177 contracts with faith-based organizations for the purposes described in this section on the same basis as 5178 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. 5179

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

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

- 5189 The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and D. 5190 purchase orders prominently display a nondiscrimination statement indicating that it does not 5191 discriminate against faith-based organizations.
- E. A faith-based organization contracting with the Institution (i) shall not discriminate against any 5192 5193 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 5194 5195 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as 5196 other organizations that contract with public bodies to account for the use of the funds provided; 5197 however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in 5198 5199 clause (ii) shall be construed to supercede or otherwise override any other applicable state law.
- 5200 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 5201 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent 5202 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to 5203 expenditures pursuant to contracts, if any, for the services of chaplains.
- 5204 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization 5205 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of 5206 a particular religion. 5207
- 5208 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 5209 to a contract between the Institution and a faith-based organization, objects to the religious character of 5210 the faith-based organization from which the individual receives or would receive the goods, services, or 5211 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 5212 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- 5213 The Institution shall provide to each individual who applies for or receives goods, services, or 5214 disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based 5215 5216 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 5217 charitable or religious character, practices, or expression. No provider of services may discriminate 5218 against you on the basis of religion, a religious belief, or your refusal to actively participate in a 5219 religious practice. If you object to a particular provider because of its religious character, you may 5220 request assignment to a different provider. If you believe that your rights have been violated, please 5221 discuss the complaint with your provider or notify the appropriate person as indicated in this form." 5222
 - § 37. Exemptions from competition for certain transactions. -
- 5223 The Institution may enter into contracts without competition, as that term is described in subsections 5224 A through J of § 5 (Methods of procurement) of these Rules, for: 5225
 - 1. The purchase of goods or services that are produced or performed by or related to:
- 5226 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 5227 Blind and Vision Impaired;
- 5228 Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or h. 5229 supported employment services serving the handicapped;
- 5230 c. Private educational institutions; or 5231
 - d. Other public educational institutions.
 - 2. Speakers and performing artists;
 - 3. Memberships and Association dues:
- 5234 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 5235 goods or services by the Institution;
- 5236 5. Group travel in foreign countries:
- 5237 6. Conference facilities and services;
- 5238 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,
- 5239 registration and tournament fees:
- 5240 8. Royalties; or

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consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

The purchase of legal services, provided that the Office of the Attorney General has been

Exemptions from competitive sealed bidding and competitive negotiation for certain 5244 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility 5245 service without competitive sealed bidding or competitive negotiation if purchased through an 5246 association of which the Institution is a member if the association was formed and is maintained for the 5247 purpose of promoting the interest and welfare of and developing close relationships with similar public 5248 bodies, provided such association has procured the insurance or electric utility services by use of 5249 competitive principles and provided that the Institution has made a determination in advance after 5250 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive 5251 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this 5252 determination. 5253 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning: 5254 'Contractor" means the entity that has a direct contract with the Institution. 5255 "Debtor" means any individual, business, or group having a delinquent debt or account with any 5256 state agency that obligation has not been satisfied or set aside by court order or discharged in 5257 bankruptcy. 5258 "Payment date" means either (i) the date on which payment is due under the terms of a contract for 5259 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days 5260 after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods 5261 or services by the Institution.. HB1502ER

5262 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor 5263 to whom the contract was awarded or to any subcontractor in the performance of the work provided for 5264 in such contract.

5265 § 40. Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment 5266 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

§ 41. 5267 Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the 5268 provisions of § 26 relating to retainage shall remain valid.

5269 § 42. Prompt payment of bills by the Institution. -

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§ 38.

5270 A. The Institution shall promptly pay for the completely delivered goods or services by the required 5271 payment date.

5272 Payment shall be deemed to have been made when offset proceedings have been instituted, as 5273 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

5274 Separate payment dates may be specified for contracts under which goods or services are *B*. 5275 provided in a series of partial deliveries or executions to the extent that such contract provides for 5276 separate payment for such partial delivery or execution.

5277 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where 5278 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall 5279 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by 5280 the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or 5281 services.

5282 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made 5283 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these 5284 Rules.

5285 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall 5286 include:

- 5287 1. A payment clause that obligates the contractor to take one of the two following actions within 5288 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the 5289 subcontractor under that contract:
- 5290 Pay the subcontractor for the proportionate share of the total payment received from the a. 5291 Institution attributable to the work performed by the subcontractor under that contract; or
- 5292 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of 5293 the subcontractor's payment with the reason for nonpayment.
- 5294 2. A payment clause that requires (i) individual contractors to provide their social security numbers 5295 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 5296 numbers.

5297 An interest clause that obligates the contractor to pay interest to the subcontractor on all 3. 5298 amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor 5299 of payment from the Institution for work performed by the subcontractor under that contract, except for 5300 amounts withheld as allowed in subdivision 1.

5301 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,

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

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

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

5310 § 46. Interest penalty; exceptions. -

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

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

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

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

5329 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 5330 5331 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the 5332 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 5333 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 5334 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven 5335 days following the payment date. 5336

§ 47. Ineligibility. -

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

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

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

5355 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 5356 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 5357 restoration of eligibility. 5358

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

5359 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 5360 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 5361 5362 instituting legal action as provided in § 54.

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5363 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, 5364 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 5365 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. 5366

5367 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 5368 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 5369 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation 5370 to Bid, the sole relief shall be withdrawal of the bid.

5371 § 49. Determination of nonresponsibility. -

5372 Following public opening and announcement of bids received on an Invitation to Bid, the Α. 5373 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 5374 5375 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 5376 5377 determines that the apparent low bidder is not responsible, it shall proceed as follows:

5378 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 5379 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 5380 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that 5381 relate to the determination, if so requested by the bidder within five business days after receipt of the 5382 notice.

5383 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 2. 5384 challenging the evaluation. The Institution shall issue its written determination of responsibility based 5385 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 5386 5387 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

5388 3. Such notice shall state the basis for the determination, which shall be final unless the bidder 5389 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures 5390 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 5391 as provided in § 54.

5392 The provisions of this subsection shall not apply to procurements involving the prequalification of 5393 bidders and the rights of any potential bidders under such prequalification to appeal a decision that 5394 such bidders are not responsible.

5395 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the 5396 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in 5397 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or 5398 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the 5399 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or 5400 directed award as provided in subsection A of § 54, or both.

5401 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 5402 5403 state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract 5404 has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

5405 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract 5406 shall proceed under this section, and may not protest the award or proposed award under the 5407 provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by 5408 5409 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 5410 to be the most advantageous. 5411

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

5412 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 5413 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 5414 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 5415 notice of the award or the announcement of the decision to award shall be given by the Institution in 5416 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 5417 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 5418 protest the award or decision to award such contract shall submit the protest in the same manner no 5419 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 5420 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part 5421 upon information contained in public records pertaining to the procurement transaction that are subject 5422 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 5423 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or

5424 at such later time as provided in this section. No protest shall lie for a claim that the selected bidder 5425 or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the 5426 protest and the relief sought. The Institution or designated official shall issue a decision in writing 5427 within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or 5428 offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures 5429 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 5430 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 5431 5432 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 5433 standards of § 55 of these Rules.

5434 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then 5435 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 5436 5437 or capricious, then the sole relief shall be as hereinafter provided.

5438 Where the award has been made but performance has not begun, the performance of the contract 5439 may be enjoined. Where the award has been made and performance has begun, the Institution may 5440 declare the contract void upon a finding that this action is in the best interest of the public. Where a 5441 contract is declared void, the performing contractor shall be compensated for the cost of performance 5442 up to the time of such declaration. In no event shall the performing contractor be entitled to lost 5443 profits.

5444 С. Where the Institution, an official designated by it, or an appeals board determines, after a 5445 hearing held following reasonable notice to all bidders, that there is probable cause to believe that a 5446 decision to award was based on fraud or corruption or on an act in violation of these Rules, the 5447 Institution, designated official or appeals board may enjoin the award of the contract to a particular 5448 bidder.

5449 § 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the 5450 validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be 5451 affected by the fact that a protest or appeal has been filed.

5452 § 52. Stay of award during protest. - An award need not be delayed for the period allowed a bidder 5453 or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing 5454 of a timely legal action as provided in § 54, no further action to award the contract shall be taken 5455 unless there is a written determination that proceeding without delay is necessary to protect the public 5456 interest or unless the bid or offer would expire. 5457

§ 53. Contractual disputes. -

5458 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall 5459 be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing 5460 herein shall preclude a contract from requiring submission of an invoice for final payment within a 5461 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of 5462 5463 claims shall not delay payment of amounts agreed due in the final payment.

5464 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 5465 Such procedure, which may be contained in the contract or may be specifically incorporated into the 5466 contract by reference and made available to the contractor, shall establish a time limit for a final 5467 decision in writing by the Institution. If the Institution has established administrative procedures 5468 meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or 5469 specifically incorporated in the contract by reference and made available to the contractor. The 5470 Institution may require the submission of contractual claims pursuant to any contract to Alternative 5471 Dispute Resolution (ADR) as an administrative procedure.

5472 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these 5473 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's 5474 decision on the claim, unless the Institution fails to render such decision within the time specified in the 5475 contract.

5476 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within 5477 six months of the date of the final decision on the claim by the Institution by invoking administrative 5478 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting 5479 legal action as provided in § 54. 5480

§ 54. Legal actions. -

5481 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from 5482 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 5483 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging 5484 that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an

91 of 162

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.

5492 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.

5497 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a
5498 sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award
5499 or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
5500 court challenging a proposed award or the award of a contract, which shall be reversed only if the
5501 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,
5502 but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable
5503 state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

5504 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.

5506 *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.

5511 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards
5512 of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or
5513 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same
5514 procurement transaction unless the Institution agrees otherwise.

5515 *G.* Nothing herein shall be construed to prevent the Institution from instituting legal action against a **5516** contractor.

5517 § 55. Administrative appeals procedure. -

5518 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 5519 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 5520 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 5521 5522 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 5523 disinterested person or panel, the opportunity to present pertinent information and the issuance of a 5524 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 5525 5526 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; 5527 (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of pregualification, the 5528 findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 5529 of these Rules. No determination on an issue of law shall be final if appropriate legal action is 5530 instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute 5531 Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

5532 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 5533 judicial review if such action is brought within 30 days of receipt of the written decision.

5534 § 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes
5535 arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and
5536 other alternative dispute resolution procedures. However, such procedures shall be nonbinding and
5537 subject to § 2.2-514 of the Code of Virginia, as applicable.

5538 § 57. Ethics in public contracting. - The Institution and its governing body, officers and employees
5539 shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement
5540 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

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EXHIBIT K

MANAGEMENT AGREEMENT BETWEEN

5545

5546	THE COMMONWEALTH OF VIRGINIA
5547	AND
5548 5540	THE COLLEGE OF WILLIAM & MARY IN VIRGINIA
5549 5550	AND THE VIRGINIA INSTITUTE OF MARINE SCIENCE
5551	PURSUANT TO
5552	THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT
5553	OF 2005
5554	
5555	POLICY GOVERNING
5556 5557	HUMAN RESOURCES FOR PARTICIPATING COVERED EMPLOYEES
5557 5558	AND OTHER COLLEGE EMPLOYEES
5559	MAD OTHER COLLEGE EMI LOTLES
5560	THE RECTOR AND VISITORS OF
5561	THE COLLEGE OF WILLIAM & MARY IN VIRGINIA
5562	POLICY GOVERNING HUMAN RESOURCES FOR
5563	PARTICIPATING COVERED EMPLOYEES
5564	AND OTHER COLLEGE EMPLOYEES
5565 5566	I. PREAMBLE. The Postmustured Higher Education Financial and Administrative Operations Act (the Act) Chapter
5566 5567	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
5568	higher education of the Commonwealth of Virginia and provides that upon becoming a Covered
5569	Institution, the College of William & Mary in Virginia shall have responsibility and accountability for
5570	human resources management for all College employees, defined in the Act as "Covered Employees,"
5571	who pursuant to subsection A of § 23-38.114 of the Act, "are state employees of" the College.
5572	Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the
5573	Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act,
5574	Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies
5575	and procedures prescribed by the Virginia Department of Human Resource Management, provided that
5576 5577	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
5578	2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel
5579	Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were subject to the state grievance
5580	procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the
5581	review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on
5582	merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either
5583	state- or College-sponsored benefit plans as described by the Management Agreement.
5584	The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law
5585 5586	and constitute the human resources policies to be included in any human resources system adopted by the College for its employees.
5587	This Policy is intended to cover the authority that may be granted to the College pursuant to
5588	Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the
5589	Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
5590	and the College's Enabling Legislation, are not affected by this Policy.
5591	II. DEFINITIONS.
5592	As used in this policy, the following terms shall have the following meanings, unless the context
5593 5594	requires otherwise: "A at" means the Bestmuctured Higher Education Eingneigh and Administrative Operations Act.
5595	"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.
5596	"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William &
5597	Mary and the Virginia Institute of Marine Science.
5598	"Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29
5599	(§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by
5600	the Virginia Department of Human Resource Management and who are not Participating Covered
5601	Employees.
5602	"College" means the College of William and Mary in Virginia, formerly known as (State Agency 204) and the Vincinia Institute of Marine Science, formerly known as (State Agency 268)
5603 5604	and the Virginia Institute of Marine Science, formerly known as (State Agency 268). "College employee" means a Covered Employee.
5605	"College Human Resources System" means the human resources system for College employees as
5606	provided for herein.

5607 "Covered Employee" means any person who is employed by the College on either a salaried or 5608 non-salaried (wage) basis.

5609 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement 5610 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that 5611 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of

5612 Subchapter 3 of the Act.

5613 "Employee" means Covered Employee unless the context clearly indicates otherwise.

5614 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of 5615 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and 5616 missions of the College.

5617 "Effective Date" means the effective date of the initial Management Agreement between the College 5618 and the Commonwealth.

5619 "Governing Law" means the Act and the College's Enabling Legislation.

5620 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act 5621 between the College and the Commonwealth.

5622 "Participating Covered Employee" means (i) all salaried nonfaculty College employees who were 5623 employed as of the day prior to the Effective Date of the College's initial Management Agreement with 5624 the Commonwealth, and who elect pursuant to § 23-38.115 of the Act, to participate in and be governed 5625 by such human resources program or programs, plans, policies, and procedures established by the 5626 College, (ii) all salaried nonfaculty College employees who are employed by the College on or after the 5627 Effective Date of the initial Management Agreement between the College and the Commonwealth, (iii) 5628 all non-salaried nonfaculty College employees without regard to when they were hired, (iv) all faculty 5629 College employees without regard to when they were hired.

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"Systems" means collectively the College Human Resources System that is in effect from time to time. 5631 III. SCOPE AND PURPOSE OF COLLEGE HUMAN RESOURCES POLICIES.

5632 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 5633 5634 5635 since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the 5636 administration of hiring, classification, and promotion practices.

5637 The Act extends and reinforces the human resources autonomy previously granted to the College. 5638 This Policy therefore is adopted by the Board of Visitors to enable the College to develop, adopt, and 5639 have in place by or after the Effective Date of its initial Management Agreement with the 5640 Commonwealth, a human resources system or systems for all College employees. On that Effective 5641 Date, and until changed by the College or unless otherwise specified in this Policy, the systems for 5642 College employees shall be the same systems applicable to those employees in effect immediately prior 5643 to that Effective Date. 5644

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

5645 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the 5646 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 5647 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 5648 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 5649 the duties and responsibilities set forth in this Policy to a person or persons within the College, who, 5650 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 5651 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 5652 and procedures. 5653

V. COLLEGE OF WILLIAM & MARY HUMAN RESOURCES SYSTEMS. 5654

A. Adoption and Implementation of College Human Resources Systems.

The President is hereby authorized to adopt and implement human resources systems for employees 5655 5656 of the College that are consistent with the Governing Law, other applicable provisions of law, these 5657 College human resources policies for College employees, and any other human resources policies 5658 adopted by the Department of Human Resource Management or the Board of Visitors for College 5659 personnel, unless College employees are exempted from those other human resources policies by law or The College Human Resources Systems shall include a delegation of personnel authority to 5660 policy. 5661 appropriate College officials responsible for overseeing and implementing the College Human Resources 5662 Systems, including a grant of authority to such officials to engage in further delegation of authority as 5663 the President or his designee deems appropriate.

5664 The College commits to regularly engage employees in appropriate discussions and to receive 5665 employee input as the new College Human Resources Systems are developed. The College will regularly 5666 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 5667

5668 appropriate, so that employees will have full information that will help them evaluate the merits of the 5669 new human resource system compared to the then-current State human resource system.

5670 Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and 5671 until amended as described below, the College's human resources systems shall consist of the following: 5672 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 5673

2. The current human resources system for Classified Employees in the College as posted on the 5674 5675 Virginia Department of Human Resource Management website at 5676 http://www.dhrm.state.va.us/hrpolicy/policy.html; and

5677 3. The human resources system for Participating Covered Employees, which shall include 5678 non-salaried (wage) employees, as posted on the College Human Resources web site, http://www.wm.edu/hr.html and periodically amended. 5679

5680 All the systems describe above, except the system described in paragraph 3, may be amended by the 5681 President, consistent with these human resources policies. The system described in paragraph 3 may be 5682 amended only by the State.

5683 B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human 5684 Resources Policies.

5685 The President, or designee, shall take all necessary and reasonable steps to assure (i) that the 5686 College officials who develop, implement and administer the College Human Resources Systems 5687 authorized by Governing Law and these human resources policies are knowledgeable regarding the 5688 requirements of the Governing Law, other applicable provisions of law, these College human resources 5689 policies, and other applicable Board of Visitors' human resources policies affecting College employees, 5690 and (ii) that compliance with such laws and human resources policies is achieved. 5691

VI. HUMAN RESOURCES POLICIES.

5692 The College Human Resources Systems adopted by the College pursuant to Governing Law and this 5693 Policy, as set forth in Section V above, shall embody the following human resources policies and principles: 5694 5695

A. Election by College Salaried Nonfaculty Employees.

5696 Upon the adoption by the College of a College Human Resources System, each salaried nonfaculty 5697 College employee who was in the employment of the College, as of the day prior to the Effective Date 5698 of its initial Management Agreement with the Commonwealth shall be permitted to elect to participate in 5699 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 5700 5701 Department of Human Resource Management, or (ii) the College Human Resources System, as 5702 appropriate. A salaried nonfaculty College employee who elects to continue to be governed by the State 5703 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 5704 5705 salaried nonfaculty College employee who elects to participate in and be governed by the College Human Resources System, by that election, shall be deemed to have elected to be eligible to participate 5706 5707 in and to be governed by the College human resources program, authorized alternative insurance, and 5708 severance plans, programs, policies and procedures that are or may be adopted by the College as part 5709 of that College Human Resources System.

5710 The College shall provide each of its salaried nonfaculty College employees who was in the 5711 employment of the College as of the day prior to the Effective Date of the College's initial Management 5712 Agreement with the Commonwealth at least 90 days after the date on which the College Human 5713 Resources System becomes effective for that College employee's classification of employees to make the 5714 election required by the prior paragraph. If such a salaried nonfaculty College employee does not make 5715 an election by the end of that specified election period, that College employee shall be deemed not to 5716 have elected to participate in the College Human Resources System. If such a salaried nonfaculty 5717 College employee elects to participate in the College Human Resources System, that election shall be irrevocable. At least every two years, the College shall offer to salaried nonfaculty College employees 5718 5719 who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 22.-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, an opportunity 5720 5721 to elect to participate in the College Human Resources System, provided that, each time prior to offering such opportunity to such salaried nonfaculty College employees, and at least once every two 5722 5723 vears after the effective date of the College Human Resources System, the College shall make available 5724 to each of its salaried nonfaculty College employees a comparison of its human resources program for 5725 that classification of salaried nonfaculty College employee with the State human resources program for 5726 comparable State employees, including but not limited to a comparability assessment of compensation 5727 and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management. 5728

5729 *B.* Classification and Compensation.

5730 The Systems shall include classification and compensation plans that are fair and General. 5731 reasonable, and are based on the availability of College financial resources. The plans adopted by the 5732 College Participating Covered Employees shall be independent of, and need not be based on, the 5733 classification and compensation plans of the Commonwealth, do not require the approval of any State 5734 agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth 5735 in paragraph 3 below. The College shall provide information on its classification and compensation 5736 plans to all College employees. The plans applicable to Participating Covered Employees may or may 5737 not include changes in classification or compensation announced by the Commonwealth depending on 5738 such factors as the availability of necessary financial resources to fund any such changes, and subject 5739 to the review and approval by the Board of Visitors of any major changes in the College's compensation 5740 plans.

5741 Classification Plan. The Systems shall include one or more classification plans for College
5742 employees that classify positions according to job responsibilities and qualifications. On the Effective
5743 Date of the College's initial Management Agreement with the Commonwealth, and until changed by the
5744 College, the classification plans shall be the same plans that are in effect for each group of employees
5745 immediately prior to that Effective Date.

5746 Compensation Plan. The Systems shall include one or more compensation plans for each College
5747 employee classification or group. On the Effective Date of the College's initial Management Agreement
5748 with the Commonwealth, and until changed by the Department of Human Resource Management, the
5749 compensation plan for Classified Employees in the College shall be the compensation plan in effect

5750 immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. 5751 On that Effective Date, and until changed by the College, the compensation plan or plans for all 5752 Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to 5753 that Effective Date. The College may adopt one or more compensation plans for Participating Covered 5754 Employees that are non-graded plan(s) based on internal and external market data and other relevant 5755 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 5756 effective. Any change recommended in the compensation plans may take into account the prevailing 5757 5758 rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the 5759 competency and skills of the individual employee, internal equity, and the availability of necessary 5760 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, 5761 5762 and shall be consistent with the approved compensation plan for the relevant position or classification.

5763 Further approval by any other State Agency, governmental body or officer is not required for setting, **5764** adjusting or approving the compensation payable to individual Participating Covered Employees.

5765 Wages. The Systems shall include policies and procedures for the authorization, computation and 5766 payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and 5767 call back, and for the payment of hourly employees.

5768 Payment of Compensation. The Systems shall include policies and procedures for paying 5769 compensation to employees, including the establishment of one or more payday schedules.

5770 Work Schedule and Workweek. The Systems shall include policies and procedures for the 5771 establishment of, and modifications to, work schedules and workweeks for all College employees, 5772 including alternative work schedules and sites, and telecommuting policies and procedures.

5773 Other Classification and Compensation Policies and Procedures. The Systems may include any other
5774 reasonable classification and compensation policies and procedures the President deems appropriate.
5775 C. Benefits.

5776 The Systems shall provide fringe benefits to all benefits eligible employees, including retirement 5777 benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The 5778 benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may 5779 include an optional benefits plan for benefits eligible employees, including additional insurance 5780 coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance 5781 programs, employee intramural and recreational passes, and other wellness programs. As provided in 5782 § 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 5783 5784 may be collected through a payroll deduction program. Participating Covered Employees shall not be 5785 required to present evidence of insurability for basic group life insurance coverage. The Board of 5786 Visitors may elect to provide benefits through Virginia Retirement System group insurance programs 5787 under the terms of and to the extent allowed by § 23-38.119 B and D of the Act or any other provision 5788 of law.

5789 Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until

5790 that section is amended, the state retirement system, state health insurance program, and state workers' 5791 compensation coverage program as they may be amended from time to time, shall continue to apply to 5792 and govern all eligible College employees.

5793 The Systems may provide different benefits plans for reasonably different groups or classifications of 5794 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 5795 5796 authority, the benefits plans provided by the College to Classified Employees and Participating Covered 5797 Employees shall be the benefits plans provided to that group or classification as of the date immediately 5798 prior to that Effective Date. On or after that Effective Date, alternative College group life, accidental 5799 death and dismemberment, and short- and long-term disability plans may be provided to eligible 5800 Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution 5801 of participation agreements as provided in subsections B and C of § 23-38.119 of the Act, they may be 5802 provided by the appropriate State programs, but no contributions to the state programs by the College 5803 shall be required for Participating Covered Employees who do not participate in the programs. Subject 5804 to the provisions of the Act, any new plans, programs and material changes permitted under current law 5805 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 5806 5807 limit permitted by the Code of Virginia based on available resources, and the authority to implement 5808 cafeteria-style benefits for College employees other than Classified Employees.

5809 Insurance and all proceeds therefrom provided pursuant to § 23-38.119 of the Act shall be exempt 5810 from legal process and may be subject to voluntary assignment as provided in subsection A of 5811 § 23-38.119. 5812

D. Employee Relations.

5813 1. General. The Systems shall contain provisions that protect the rights and privileges of College 5814 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 5815 5816 compliance with applicable law and regulations.

5817 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to 5818 the performance of job duties, and free from intimidation or coercion in violation of State or federal 5819 law, including sexual harassment or other discrimination.

5820 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific 5821 to policies and procedures for awarding, honoring, or otherwise recognizing College employees, 5822 including but not limited to those who have performed particularly meritorious service for the College, 5823 have been employed by the College for specified periods of time, or have retired from the College after 5824 lengthy service.

5825 5. Counseling Services. The Systems shall provide counseling services through the State's Employee 5826 Assistance Program or a College Employee Assistance Program to any eligible College employee 5827 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the 5828 circumstances under which the time necessary to participate in such counseling may be granted.

5829 6. Unemployment Compensation. The Systems shall ensure that College employees receive the full 5830 unemployment compensation benefits to which they are legally entitled, and that the College's liability is 5831 limited to legitimate claims for such benefits.

5832 7. Workers' Compensation. The Systems shall ensure that College employees have workers' 5833 compensation benefits to which they are legally entitled pursuant to the State Employees Workers' 5834 Compensation Program administered by the Department of Human Resource Management.

5835 8. Performance Planning and Evaluation. The Systems shall include one or more performance 5836 planning and evaluation processes for College employees that (i) establish and communicate the 5837 College's performance expectations, (ii) help develop productive working relationships, (iii) allow 5838 employees to present their views concerning their performance, (iv) identify areas for training or 5839 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify 5840 how superlative or inadequate performance shall be addressed, and (vii) ensure that all College 5841 employees are provided relevant information on the evaluation process. The Systems may include 5842 separate performance and evaluation processes for reasonably distinguishable groups of College 5843 On the Effective Date of the College's initial Management Agreement with the employees. 5844 Commonwealth, the existing merit-based performance management system for faculty shall continue, 5845 until amended by the College. On or after that Effective Date, College nonfaculty salaried Participating 5846 Covered Employees may be subject to a variable merit-based performance management system.

5847 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all 5848 employees and to ensure safe, efficient College operations and compliance with the law, the Systems 5849 shall establish rules of personal conduct and standards of acceptable work performance for College 5850 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for

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5851 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or 5852 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more 5853 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action 5854 to employee conduct occurring only when employees are at work or are otherwise representing the 5855 College in an official or work-related capacity, unless otherwise specifically provided by the policies of 5856 the Systems or other applicable law. The Systems may provide for a probationary period for new and 5857 re-employed College salaried nonfaculty employees, during which period the policies for corrective 5858 discipline shall not be applicable and the employee may not use the grievance procedure set forth in the 5859 next paragraph. The Systems may include separate rules of personal conduct and standards of 5860 acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of College employees. 5861

5862 10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to 5863 resolve employment-related problems and complaints informally, and shall be permitted to discuss their 5864 concerns freely and without fear of retaliation with immediate supervisors and management. In the 5865 event that such problems cannot be resolved informally, all salaried nonfaculty College employees, 5866 regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in 5867 § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of 5868 the Code of Virginia, to the extent it was applicable to their classification of employees prior to the 5869 Effective Date of the College's initial Management Agreement with the Commonwealth. On that 5870 Effective Date, and until changed by the College, the faculty grievance procedures in effect immediately 5871 prior to the Effective Date shall continue.

5872 11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the
5873 Classified Employee may file a complaint with the Department of Human Resource Management Office
5874 of Equal Employment Services. All Covered Employees and applicants for employment after the
5875 Effective Date of the College's initial Management Agreement with the Commonwealth shall file a
5876 complaint with the appropriate College office or with the appropriate federal agencies.

5877 12. Layoff Policy. The Systems shall include one or more layoff policies for salaried College 5878 employees who lose their jobs for reasons other than their job performance or conduct, such as a 5879 reduction in force or reorganization at the College. These College layoff policies shall govern such 5880 issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) 5881 notice to employees affected by a layoff, (iv) placement options within the College or its respective major 5882 divisions and within other parts of the College, (v) the preferential employment rights, if any, of various 5883 College employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling 5884 employees. In accordance with the terms of the Act, College employees who: (i) were employed prior to 5885 the Effective Date of the College's initial Management Agreement with the Commonwealth, (ii) would 5886 otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by 5887 the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in 5888 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 5889 5890 5891 hired by a State agency or executive branch institution before the Effective Date of the College's initial 5892 Management Agreement with the Commonwealth and who were separated after that date by that State 5893 agency or executive branch institution because of a reduction in workforce. If the College has adopted 5894 a classification system pursuant to § 23-38.116 of the Act that differs from the classification system 5895 administered by the Department of Human Resource Management, the College shall classify the 5896 separated employee according to its classification system and shall place the separated employee 5897 appropriately. The College may include separate policies for reasonably distinguishable groups of 5898 College employees. On or after the Effective Date of the College's initial Management Agreement with 5899 the Commonwealth, all employees from other State agencies and executive branch institutions who are 5900 placed by the College under the provisions of the State Layoff Policy shall be Participating Covered 5901 Employees.

5902 13. Severance Benefits. In accordance with the terms of the Act, the College shall adopt severance 5903 policies for salaried Participating Covered Employees who are involuntarily separated for reasons 5904 unrelated to performance or conduct. The terms and conditions of such policies shall be determined by 5905 the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior 5906 to the Effective Date of the College's initial Management Agreement with the Commonwealth shall be 5907 covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of 5908 The College and the Board of the Virginia Retirement System may negotiate a formula Virginia. 5909 according to which cash severance benefits may be converted to years of age or creditable service for 5910 Participating Covered Employees who participate in the Virginia Retirement System. An employee's 5911 becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in

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

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

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

5936 16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President deems appropriate, which may 5937 5938 include, but are not limited to, policies or procedures relating to orientation programs for new or 5939 re-employed College employees, an employee suggestion program, the responsibility of College 5940 employees for property placed in their charge, work breaks, inclement weather and emergencies, and 5941 employment outside the College. 5942

E. Leave and Release Time.

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

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

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

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

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

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

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5973 employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified
5974 Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a
5975 Participating Covered Employee, that decision shall be irrevocable.

5976 Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, 5977 where appropriate, of a decision either by the employee or by the College to separate the employee 5978 from the College in accordance with policies governing performance, conduct, or layoff.

5979 G. Information Systems.

5980 The College shall provide an electronic file transfer of information on all salaried College employees
5981 and shall continue to provide the Employee Position Reports to meet the human resources reporting
5982 requirements specified by law or by request of the Governor or the General Assembly, unless the
5983 College is specifically exempted from those requirements. The College shall conduct assessments to
5984 demonstrate its accountability for human resources practices that comply with laws and regulations.

5985 The Department of Human Resource Management and the College have entered into a Memorandum of
5986 Understanding, attached hereto as Attachment 2, which may be amended from time to time by
5987 agreement of the parties, regarding the specific data and reporting requirements. The College shall be
5988 accountable for ensuring the timeliness and integrity of the data transmitted to the Department of
5989 Human Resources Management.

5990 VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND **5991** OTHER BOARD OF VISITORS' POLICIES AFFECTING COLLEGE PERSONNEL.

5992 On and after the Effective Date of its initial Management Agreement with the Commonwealth,
5993 College employees shall be subject to the terms and conditions of the Act and the Management
5994 Agreement between the Commonwealth and the College. Classified Employees shall continue to be
5995 subject to the human resources policies and exceptions to those policies adopted or approved by the
5996 Department of Human Resource Management.

5997 In addition, all College employees also shall remain subject to any other human resources policies
5998 adopted by the Board of Visitors applicable to College personnel unless College employees or a subset
5999 thereof are specifically exempted from those other human resources policies either by those other
6000 policies or by this Policy.

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ATTACHMENT 2 Memorandum of Understanding

Between The College of William and Mary and the

Department of Human Resources Management Regarding

The Reporting of Human Resources Management Data

6007 This Memorandum of Understanding, which may be amended from time to time by the agreement of
6008 all parties, is an attachment to the Policy Governing Human Resources for Participating Covered
6009 Employees and Other College Employees pursuant to the Restructured Higher Education Financial and
6010 Administrative Operations Act of 2005, and is hereby entered into between the College of William and
6011 Mary and the Department of Human Resource Management (DHRM).

6012 I. This document outlines the provisions for information management pertaining to human resources
 6013 data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting
 6014 requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so
 6015 through efficient and cost-effective methods.

6016 1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will 6017 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.

6029 2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact
6030 analyses of employment and compensation actions that are part of the AAP, as demonstration of the
6031 College's compliance with relevant federal and state employment laws and regulations.

6032 3. The College may key data into the Benefits Enrollment System or provide a batch file, or 6033 employees may use Employee Direct (employee self service).

84 85	4. Other reports to be provided by the College include the following: a. Monthly Employment Position Penert
35 36	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.
38	APPROVALS:
9 0	The College of William and Mary:
	By:Date
	Vice President for Administration
	Department of Human Resources Management:
	By:Date
	Director, Department of Human Resources Management
	EXHIBIT L
	MANAGEMENT AGREEMENT
	BETWEEN
	THE COMMONWEALTH OF VIRGINIA
	AND THE COLLEGE OF WILLIAM AND MARY
	PURSUANT TO
	THE RESTRUCTURED HIGHER EDUCATION
	FINANCIAL AND ADMINISTRATIVE OPERATIONS
	ACT OF 2005
	POLICY GOVERNING
	FINANCIAL OPERATIONS AND MANAGEMENT
	THE DECTOR AND DOADD OF VICITORS
	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
i	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
1	requires otherwise:
	"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4 10 (\$ 23,38,88 at sea) of Title 23 of the Code of Virginia
	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
С	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
1	Marine Science (State Agency 268). "Covered Institution" means on or after the Effective Date of its initial Management Agreement with
1	"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
	Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and

6095 missions of the College.

6096 "Effective Date" means the effective date of the initial Management Agreement between the College 6097 and the Commonwealth.

6098 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act 6099 between the College and the Commonwealth of Virginia.

6100 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 6101 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 6102 general government funds, as defined in the December 20, 2004 Report to the Governor and General 6103 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time. 6104 III. SCOPE OF POLICY.

6105 This Policy applies to the College's responsibility for management, investment and stewardship of all 6106 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, 6107 and internal controls adequate to protect and account for the College's financial resources. 6108

6109 The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it is 6110 implemented by the College on behalf of the Institute, but the Institute shall not receive any additional 6111 independent financial operations and management authority as a result of this Management Agreement 6112 beyond the independent financial operations and management authority that it had prior to the Effective 6113 Date of the College's initial Management Agreement with the Commonwealth or that it may be granted 6114 by law in the future.

6115 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

6116 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 6117 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 6118 6119 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 6120 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 6121 6122 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 6123 and procedures. 6124

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

6125 The President, or designee, shall continue to be authorized by the Board to maintain existing and 6126 implement new policies governing the management of College financial resources. These policies shall 6127 continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency 6128 with the current accounting principles employed by the Commonwealth, including the use of fund 6129 accounting principles, with regard to the establishment of the underlying accounting records of the 6130 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 6131 6132 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, 6133 6134 including moneys transferred to the College pursuant to a general fund appropriation, and ensure 6135 compliance with the requirements of the Appropriation Act.

6136 The financial management system shall continue to include a financial reporting system to satisfy 6137 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 6138 as specified in the related State Comptroller's Directives, and the College's separately audited financial 6139 statements. To ensure observance of limitations and restrictions placed on the use of the resources 6140 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 6141 6142 Governmental Accounting Standards Board.

6143 In addition, the financial management system shall continue to provide financial reporting for the 6144 President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the 6145 financial operations of the College. Upon the Effective Date of the initial Management Agreement 6146 between the College and the Commonwealth, except for the recordation of daily revenue deposits of 6147 State funds as specified in Section VII below, the College shall not be required to record its financial 6148 transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the 6149 current monthly interfacing with CARS, or be a part of any subsequent Commonwealth financial 6150 systems that replace CARS or are in addition to CARS, but shall have its own financial reporting 6151 system. The College's financial reporting system shall provide (i) summary monthly reports for State 6152 agencies including, but not limited to, the Department of Accounts, the Department of Planning and 6153 Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the 6154 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, 6155

and using such format that is compatible with the Commonwealth's accounting system, as may be 6156 6157 requested by the requesting State agency, and (ii) such other special reports as may be requested from 6158 time to time.

6159 VI. FINANCIAL MANAGEMENT POLICIES.

6160 The President, or designee, shall create and implement any and all financial management policies 6161 necessary to establish a financial management system with adequate risk management and internal 6162 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 6163 6164 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 6165 6166 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 6167 and administrative functions. In general, the system of independent financial management policies shall 6168 be guided by the general principles contained in the Commonwealth's Accounting Policies and 6169 6170 Procedures such as establishing strong risk management and internal accounting controls to ensure 6171 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 6172 performance of College programs. 6173

6174 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College 6175 shall continue to follow the Commonwealth's accounting policies until such time as specific alternate 6176 policies can be developed, approved and implemented. Such alternate policies shall include applicable 6177 accountability measures and shall be submitted to the State Comptroller for review and comment before 6178 they are implemented by the College. 6179

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

6180 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the 6181 College shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the College shall remain subject to the appropriations process. 6182

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher 6183 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 6184 6185 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 6186 6187 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 6188 6189 § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full 6190 fiscal year for which the financial and administrative management and educational-related performance 6191 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 6192 6193 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain 6194 6195 financial incentives, including interest on the tuition and fees and other non-general fund Education and General Revenues deposited into the State Treasury by the public institution of higher education. 6196

6197 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for 6198 which it has received such certification from SCHEV, the College is authorized to hold and invest 6199 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary 6200 enterprise funds, and all other non-general fund revenues subject to the following requirements:

6201 i) The College shall deposit such funds in the State Treasury pursuant to the State process in place 6202 at the time of such deposit;

6203 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section 6204 IX below;

6205 iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold 6206 in escrow all interest earned on the College's tuition and fees and other non-general fund Educational 6207 and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia 6208 certification that the College has met such institutional performance benchmarks and the conditions 6209 prescribed in subsection \overline{B} of § 23-38.88, the Governor shall include in the next budget bill a 6210 non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, 6211 equivalent to the amount deposited in the escrow account as the financial incentive provided in 6212 subdivision 1 of § 2.2-5005, after which time the College may expend the funds for purposes related to 6213 its mission. If public institutions of higher education of the Commonwealth are permitted, or the College 6214 in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 6215 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow. 6216

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6217 iv) If in any given year the College does not receive the certification from the State Council of 6218 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall 6219 6220 transfer to the general fund the balance in the escrow account as of June 30 of that year.

6221 v) Beginning on the effective date of its initial Management Agreement with the College until the 6222 beginning of the first fiscal year following the fiscal year for which it has received the required 6223 certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds 6224 with the State Treasurer by the same process that it would have been required to use if it had not 6225 entered into a Management Agreement with the Commonwealth.

6226 vi) On the first business day of the first fiscal year following the fiscal year for which it has 6227 received the required certification from SCHEV, the College may draw down all cash balances held by 6228 the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored 6229 programs, auxiliary enterprises, and all other non-general fund revenues.

6230 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay 6231 these funds to the College as specified in Section IX below.

The College also shall have sum sufficient appropriation authority for all non-general funds as 6232 6233 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 6234 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 6235 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 6236 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be 6237 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 6238 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to 6239 the Department of Planning and Budget by July 31 of the subsequent fiscal year.

6240 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 6241 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 6242 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the 6243 intent of the Commonwealth and the College that the College shall be exempt from the revenue 6244 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, 6245 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the 6246 College that the College shall be entitled to retain non-general fund savings generated from changes in 6247 Commonwealth rates and charges, including but not limited to health, life, and disability insurance 6248 rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting 6249 such savings back to the Commonwealth. This financial resource policy assists the College by providing 6250 the framework for retaining and managing non-general funds, for the receipt of general funds, and for 6251 the use and stewardship of all these funds.

6252 The President, or designee, shall continue to provide oversight of the College's cash management 6253 system which is the framework for the retention of non-general funds. The Internal Audit Department of 6254 the College shall periodically audit the College's cash management system in accordance with 6255 appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors.

6256 Additional oversight shall continue to be provided through the annual audit and assessment of internal 6257 controls performed by the Auditor of Public Accounts.

6258 For the receipt of general and non-general funds, the College shall conform to the Security for 6259 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia, as it currently 6260 exists and from time to time may be amended. 6261

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

6262 The President, or designee, shall continue to be authorized to create and implement any and all 6263 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 6264 Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the College shall take 6265 6266 all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

6267 These shall include, but not be limited to, establishing the criteria for granting credit to College 6268 customers; establishing the nature and timing of collection procedures within the above general 6269 principles; and the independent authority to select and contract with collection agencies and, after 6270 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 6271 collection activities for all College accounts receivable such as reporting delinquent accounts to credit 6272 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. 6273 accordance with sound collection activities, the College shall continue to utilize the Commonwealth's 6274 Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax 6275 Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly 6276 summary report of receivables to the Department of Accounts in accordance with the reporting 6277 procedures established pursuant to the Virginia Debt Collection Act.

6278 IX. DISBURSEMENT MANAGEMENT.

6279 The President, or designee, shall continue to be authorized to create and implement any and all 6280 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 6281 6282 funds, from whatever source derived, in the execution of the College's operations. These policies also 6283 shall continue to address the timing of appropriate and reasonable disbursements consistent with the 6284 Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's 6285 mission, including travel-related disbursements. Further, the College's disbursement policy shall 6286 continue to provide for the mechanisms by which payments are made including the use of charge cards, 6287 warrants, and electronic payments. Since the College no longer will interface to the CARS system or 6288 any replacement for the CARS system for disbursements, the College shall establish its own mechanisms 6289 for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and 6290 payments to the Commonwealth's Debt Set Off Collection Programs.

6291 Beginning with the fiscal year after the first fiscal year for which it first receives the required **6292** certification from SCHEV, the College may draw down its general fund appropriations (subject to **6293** available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.

6294 Such funds shall be available to the College for disbursement as provided in the then-current rules of **6295** the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in **6296** accordance with the following schedule:

6297 i) The College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for
6298 Educational and General programs on the first and fifteenth days of each month, and up to 50% of its
6299 annual general fund appropriation for Student Financial Assistance on or after September 1 of each
6300 year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student
6301 obligations;

 \vec{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

6304 *iii*) The College anticipates that expenditures could exceed available revenues from time to time
6305 during the year if the above disbursement schedule is used. When the College projects a cost deficit in
6306 activities supported by general fund appropriations, the College may make a request to the State
6307 Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a
6308 form and within a timeframe agreeable to the parties, in order to cover expenditures.

6309 These disbursement policies shall authorize the President, or designee, to independently select, 6310 engage, and contract for such consultants, accountants, and financial experts, and other such providers 6311 of expert advice and consultation, and, after consultation with the Office of the Attorney General, 6312 private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall 6313 continue to include the ability to locally manage and administer the Commonwealth's credit card and 6314 cost recovery programs related to disbursements, subject to any restrictions contained in the 6315 Commonwealth's contracts governing those programs, provided that the College shall submit the credit 6316 card and cost recovery aspects of its financial and operations policies to the State Comptroller for 6317 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 6318 6319 previously decentralized processes for public records, payroll, and non-payroll disbursements. The 6320 College shall continue to provide summary quarterly prompt payment reports to the Department of 6321 Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

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

X. DEBT MANAGEMENT.

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6329 The President, or designee, shall continue to be authorized to create and implement any and all debt6330 management policies as part of a system for the management of College financial resources.

Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or 6331 6332 other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, 6333 and that are consistent with debt capacity and management policies and guidelines established by its 6334 Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, 6335 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any 6336 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 6337 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised 6338

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6339 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 6340 comment prior to its adoption by the College.

6341 The College recognizes that there are numerous types of financing structures and funding sources 6342 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 6343 the President, or designee, within the context of the overall portfolio to ensure that any financial 6344 product or structure is consistent with the College's objectives. Regardless of the financing structure(s) 6345 utilized, the President, or designee, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the 6346 6347 impact on College creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act, shall be authorized by resolution 6348 6349 of the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

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

6357 XI. INVESTMENT POLICY.

6358 It is the policy of the College to invest its operating and reserve funds solely in the interest of the **6359** College and in a manner that will provide the highest investment return with the maximum security **6360** while meeting daily cash flow demands and conforming to the Investment of Public Funds Act **6361** (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence **6362** and diligence under the circumstances then prevailing that a prudent person acting in a like capacity **6363** and familiar with such matters would use in the conduct of an enterprise of a like character and with **6364** like aims.

6365 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.

6367 *The Board of Visitors shall periodically review and approve the investment guidelines governing the* **6368** *College's operating and reserve funds.*

6369 XII. INŠURANČE AND RISK MANAGEMENT.

6370 By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any 6371 intent during the next biennium to withdraw from any insurance or risk management program made 6372 available to the College through the Commonwealth's Division of Risk Management and in which the 6373 College is then participating, to enable the Commonwealth to complete an adverse selection analysis of 6374 any such decision and to determine the additional costs to the Commonwealth that would result from 6375 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College 6376 proceeds to withdraw from the insurance or risk management program, the College shall reimburse the 6377 Commonwealth for all such additional costs attributable to such withdrawal, as determined by the 6378 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and 6379 the Commonwealth. 6380

6381 3. That the following Chapter 3 shall hereafter be known as the "2006 Management Agreement 6382 Between the Commonwealth of Virginia and The University of Virginia:" 6383 CHAPTER 3.

6384 6385 MANAGEMENT AGREEMENT 6386 BY AND BETWEEN 6387 THE COMMONWEALTH OF VIRGINIA 6388 AND THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA 6389 6390 This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the 6391 Commonwealth of Virginia (hereafter, the Commonwealth) and the Rector and Visitors of the University 6392 of Virginia (hereafter, the University) provides as follows: 6393 RECITALS 6394 WHEREAS, the University has satisfied the conditions precedent set forth in subsections A and B of 6395 § 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 6396 6397 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code 6398 of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:

6399 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the University

6400 held on June 10, 2005, and the accompanying certification of the Secretary of the Board, indicate that 6401 an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § 23-38.97 of the Act; 6402 6403 2. Written Application to the Governor. The University has submitted to the Governor a written 6404 Application, dated October 27, 2005, with copies to the Chairmen of the House Committee on 6405 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 6406 6407 qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the 6408 University has fulfilled the requirements of paragraph 2 of subsection A of § 23-38.97 of the Act; and 6409 3. Finding by the Governor. In accordance with subsection B of § 23-38.97 of the Act, the 6410 Governor has found that the University has fulfilled the requirements of subdivision A 2 of § 23-38.97, 6411 and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the University; and 6412 6413 WHEREAS, the University is therefore authorized to enter into this Management Agreement as 6414 provided in subsection D of § 23-38.88 and Subchapter 3 of the Act. 6415 AGREEMENT 6416 NOW, THEREFORE, in accordance with the provisions of the Restructured Higher Education 6417 Administrative and Financial Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code 6418 of Virginia, and in consideration of the foregoing premises, the Commonwealth and the University do 6419 now agree as follows: 6420 ARTICLE 1. DEFINITIONS. 6421 As used in this Agreement, the following terms have the following meanings, unless the context 6422 requires otherwise: 6423 "Academic Division" means that part of the University known as (State Agency 207). "Act" means the Restructured Higher Education Administrative and Financial Operations Act, 6424 6425 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia. "Agreement" means "Management Agreement." 6426 6427 "Board of Visitors" means the Rector and Board of Visitors of the University of Virginia. "College" means that part of the University operated as the University of Virginia's College at Wise 6428 6429 (State Agency 246). 6430 "Covered Employee" means any person who is employed by the University on either a salaried or 6431 wage basis. 6432 "Covered Institution" means, on and after the effective date of its initial management agreement with 6433 the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has 6434 entered into a management agreement with the Commonwealth to be governed by and in accordance 6435 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 6436 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and 6437 missions of the individual public institutions of higher education of the Commonwealth, and as provided 6438 6439 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 6440 Center. 6441 "Management Agreement" means this agreement between the Commonwealth of Virginia and the 6442 University as required by subsection D of § 23-38.88 and Subchapter 3 of the Act. 6443 "Medical Center" means that part of the University consisting of the University of Virginia Medical 6444 *Center* (State Agency 209), and related health care and health maintenance facilities. 6445 "Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the 6446 University. 6447 "Public institution of higher education" means those two-year and four-year institutions enumerated 6448 in § 23-14 of the Code of Virginia. 6449 "University" means the University of Virginia, consisting of the Academic Division, the College, and 6450 the Medical Center. 6451 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT. 6452 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability. Subchapter 3 of the 6453 Act, provides that, upon the execution of, and as of the effective date for, this Management Agreement, the University shall become a Covered Institution entitled to be granted by the Commonwealth and to 6454 6455 exercise the powers and authority provided in Subchapter 3 of the Act, that are expressly contained in 6456 this Management Agreement. In general, subject to its management agreement with the Commonwealth, 6457 status as a Covered Institution governed by Subchapter 3 of the Act, and this Management Agreement is 6458 intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, 6459 approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully 6460

6461 responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its **6462** management agreement with the Commonwealth.

6463 SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the 6464 enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board 6465 of Visitors polices attached hereto as Exhibits M through R, shall be subject to the reviews, assessments, 6466 and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint 6467 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or 6468 (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or 6469 Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by 6470 law other than the Act.

6471 SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and 6472 limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; 6473 Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth 6474 and the University agree that the Commonwealth has expressly granted to the University by this 6475 Management Agreement all the powers and authority contained in certain policies adopted by the Board 6476 of Visitors of the University attached hereto as Exhibits M through R and governing (1) the undertaking 6477 and implementation of capital projects, and other acquisition and disposition of property (Exhibit M), 6478 (2) the leasing of property, including capital leases (Exhibit N), (3) information technology (Exhibit O), 6479 (4) the procurement of goods, services, including certain professional services, insurance, and 6480 construction (Exhibit P), (5) human resources (Exhibit Q), and (6) its system of financial management 6481 (Exhibit R), including, as provided in subsection B of § 23-38.104 of the Act, the sole authority to 6482 establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation 6483 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 6484 contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management 6485 6486 Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits M through 6487 R, the Commonwealth and the University agree that the Commonwealth has expressly granted to the 6488 University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of 6489 Subchapter 3 of the Act.

6490 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 6491 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 6492 of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits M 6493 through R. Consistent with this full and ultimate accountability, however, the Board may, pursuant to 6494 its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this 6495 Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies 6496 adopted by the Board and attached hereto as Exhibits M through R, to a person or persons within the 6497 University.

6498 SECTION 2.1.3. Reimbursement by the University of Certain Costs. By July 1 of each 6499 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 6500 6501 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 6502 Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to 6503 6504 determine the additional costs to the Commonwealth that would result from any such withdrawal. If 6505 upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from 6506 such health or other group insurance or risk management program, the University shall, pursuant to 6507 subdivision D 2 c of § 23-38.88, reimburse the Commonwealth for all such additional costs attributable 6508 to such withdrawal as determined by the Commonwealth's actuaries.

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

6516 SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to **6517** § 23-38.110 of the Act, and subject to the provisions of this Management Agreement, the University may **6518** be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ 2.2-4300 **6519** et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the **6520** VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of **6521** 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.

6527 Subsection D of § 23-38.110 of the Act, requires that the University identify the public, educational, 6528 and operational interests served by any procurement rule or rules that deviate from those in the VPPA. 6529 The adopted Board of Visitors policy on procurement and the Procurement Rules provide the University 6530 with the autonomy to administer its procurement process while fully adhering to the principle that 6531 competition should be sought to the maximum extent feasible. This autonomy will better position the 6532 University to support the requirements of its growing teaching, research and outreach missions. Greater 6533 autonomy in procurement will improve internal capacity to respond quickly to emergent material and 6534 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. 6535 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 6536 6537 6538 education community nationally. Further, these changes will provide efficiencies to both the University 6539 and public sector suppliers.

6540 SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § 23-38.104 of the Act, requires 6541 that a Covered Institution include in its management agreement with the Commonwealth the 6542 quantification of cost savings realized as a result of the additional operational flexibility provided 6543 pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth 6544 has not yet been implemented by the University, the parties agree that the University is not in a position 6545 to quantify any such cost savings at this time, although the University expects that there will be cost 6546 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, 6547 6548 and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the 6549 Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, 6550 and as otherwise described in Section 2.1.1 above.

6551 SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the University 6552 shall continue to fully participate in, and receive funding support from the many and varied programs 6553 established now or in the future by the Commonwealth to provide support for Virginia's public 6554 institutions of higher education and for Virginians attending such institutions, including but not limited 6555 the state capital outlay and bond financing initiatives undertaken from time to time by the to: 6556 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ 23-30.24 et 6557 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 6558 6559 financial assistance programs; and other statewide programs or initiatives that exist, or may be 6560 established, in support of the Commonwealth's higher education institutions, programs, or activities.

6561 As a teaching hospital that is a part of the University as of the Effective Date, the Medical Center 6562 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 6563 (§ 32.1-325 et seq.). The University has committed to serve indigent and medically indigent patients 6564 through its adoption of the Guidelines for the Eligibility of Indigent and Medically Indigent Persons for 6565 6566 Health Care Services at the State University Teaching Hospitals. Pursuant to subsection B of 6567 § 23-38.93 of the Act, the Commonwealth, through the Department of Medical Assistance Services, shall, 6568 subject to the appropriation in the Appropriation Act in effect, continue to reimburse the full cost of the 6569 provision of care, treatment, health-related and educational services to indigent and medically indigent 6570 patients and continue to treat the Medical Center as a Type One Hospital for purposes of such 6571 reimbursement.

6572 SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § 23-38.88 of the Act, the only **6573** implied authority granted to the University by this Management Agreement is that implied authority that **6574** is actually necessary to carry out the expressed grant of financial or operational authority contained in **6575** this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as **6576** Exhibits M through R.

6577 SECTION 2.1.9. Exercise of Authority. The University and the Commonwealth acknowledge and
6578 agree that the execution of this Management Agreement constitutes the conclusion of a process that, as
6579 of the effective date of this Agreement, confers upon the University the enhanced authority and
6580 operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of
6581 the Act. Therefore, without any further conditions or requirements, the University shall, on and after the
6582 effective date of this Management Agreement, be authorized to exercise the authority conferred upon it

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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.

6588 The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of 6589 § 23-38.91 of the Act and consistent with the terms of this Management Agreement, the Board of 6590 Visitors of the University shall assume full responsibility for management of the University, subject to 6591 the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this 6592 Management Agreement as provided in § 23-38.88 of the Act, and this Management Agreement. The 6593 Board of Visitors shall be fully accountable for (a) the management of the University as provided in the 6594 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, 6595 and (c) meeting such other provisions as are set forth in this Management Agreement.

6596 SECTION 2.2. State Goals.

6597 SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education
6598 of the Commonwealth by subsection B of § 23-38.88 of the Code of Virginia, prior to August 1, 2005,
6599 the Board of Visitors of the University adopted the resolution setting forth its commitment to the
6600 Governor and the General Assembly to meet the State goals specified in that subsection B. In addition
6601 to the above commitments, the University commits to furthering these State goals by:

6602 1. In addition to its six-year target of achieving \$337 million in external research by 2011-12, the
6603 University commits to match from institutional funds, other than general funds or tuition, on a dollar for
6604 dollar basis, any additional research funds provided by the State in the Appropriation Act above the
6605 amount provided from institutional funds for research in 2005-06.

- 6606 In a concerted effort to provide educational opportunities to Virginia students attending 2. institutions in the Virginia Community College System (VCCS) and Richard Bland College, the 6607 University commits to work with Virginia Polytechnic Institute and State University (Virginia Tech) and 6608 6609 the College of William and Mary in Virginia to establish a program under which these three institutions 6610 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 6611 6612 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 6613 year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students each **6614** 6615 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 6616 6617 each year. The three institutions have agreed that they will mutually determine how to divide the 6618 responsibility for these additional transfer students equitably among themselves.
- 6619 3. As an institutional priority and obligation, the University commits to the Governor and General 6620 Assembly to work meaningfully and visibly with an economically distressed region or local area of the 6621 Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in 6622 education, income, employment, and other factors. The University commits to establish a formal 6623 partnership with that area to develop jointly a specific action plan that builds on the University's 6624 programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise 6625 to stimulate economic development in the area to make the area more economically viable, and to 6626 improve student achievement and teacher and administrator skill sets in a school division in that area. 6627 The University shall submit the action plan to the Governor and General Assembly by no later than 6628 December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each 6629 year on its progress in implementing the action plan during the prior fiscal year.
- 6630 SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the
 6631 Code of Virginia, the University, along with all other public institutions of higher education of the
 6632 Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia
 6633 (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing the University's academic,
 6634 financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12.
- 6635 Subsection A of § 23-9.2:3.02 requires the University to update this Six-Year Plan by October 1 of each
 6636 odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement
 6637 address, among other issues, such matters as the University's in-state undergraduate student enrollment,
 6638 its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students.
- **6639** *These matters are addressed below and in the University's Six-Year Plan submitted to SCHEV, and the* **6640** *parties therefore agree that the University's Six-Year Plan and the description below meet the* **6641** *requirement of subsection B of § 23-38.97 of the Act.*
- 6642 Subsection B of § 23-38.104 of the Act requires the Board of Visitors of the University to include in 6643 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.

6647 The Academic Division will continue to offer enrollment to in-state undergraduate students without 6648 regard to ability to pay and shall continue implementation of AccessUVa, a financial aid program 6649 designed to keep higher education affordable for all undergraduate students, including Virginians and 6650 non-Virginians, who qualify for admission, regardless of economic circumstance. In the fall 2005 AccessUVa was modified to provide expanded benefits for qualifying Virginia Community College 6651 6652 System transfer students. The program shall be substantially as described in the remainder of this 6653 Section 2.2.2, as may be amended from time to time by the Board of Visitors of the University and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on 6654 Finance and the House Committee on Appropriations. 6655

6656 The Academic Division currently offers financial aid packages to meet 100% of demonstrated need to 6657 all qualified undergraduate students. This goal was met in 2004-05.

6658 The Academic Division will eliminate all need-based loans, replacing them with grants, in the 6659 financial-aid packages of low-income undergraduate students, beginning with the fall 2004 entering 6660 class. At this time low-income is defined as families with an income equivalent to 200% of the federal 6661 poverty line or less. This phase will be fully implemented by fall 2007. The University's goals for this 6662 component of the program include:

6663 1. Increase enrollment by low-income students.

6664 2. Improve the socio-economic diversity at the University.

6665 *3. Enable low-income financial aid recipients to have an enhanced student experience.*

6666 4. Improve satisfaction in post graduate choices of low-income financial aid recipients.

Success in attaining these goals will be measured by five metrics, 1) applications from low-income 6667 students, 2) low-income applicants offered admissions, 3) low-income applicants who accepted offers, 4) 6668 yield of low-income students, and 5) percentage of low-income students in the student body. In 2005-06 applications from low-income students rose 13.1% from the previous year for a total of 875. The 6669 6670 University offered admission to 357 applicants, 10% more than in the prior year. Almost 40% more of 6671 those low-income students to whom the University offered admission for the 2005-06 academic year 6672 accepted the offer, 233 compared to 133 last year, increasing the yield from 50% to over 64%. The 6673 6674 trend in the percentage of low-income students in the student body has also improved over the last two 6675 years increasing from 4.29% in 2004-05 to 6.45% in 2005-06. The University expects to increase the 6676 numbers of low-income students enrolled from the current 830 to 1,033 by 2011-12 as outlined in the 6677 Six-Year Plan.

6678 The Academic Division will cap the amount of need-based loans to any undergraduate student who
6679 qualifies for some form of financial aid to a maximum of 25% of the total in-state cost of attendance
6680 over four years and will meet the remaining need with grants, beginning with the fall 2005 first-year or
6681 VCCS transfer students. All students, regardless of state residency, will receive the in-state cap level.

6682 This phase will be fully implemented by fall 2008. This particular component of the program is targeted
6683 at middle-income students whose families earn between \$75,000 and \$149,999. The University's goals
6684 for this component of the program include:

- 6685 1. Improve the socio-economic diversity at the University.
- 6686 2. Enable financial aid recipients to have an enhanced student experience.
- 6687 *3. Improve satisfaction in post graduate choices.*

6688 Success will be measured in this area by three metrics, 1) applications from middle-income students,
6689 2) participation of financial aid recipients in study abroad, internships, volunteer work, student
6690 activities, etc., and 3) post graduate choices and starting salaries. Seven percent or 219 more
6691 middle-income students applied to the University in 2005-06 than in 2004-05 and qualified for
6692 AccessUVa benefits.

6693 The Academic Division will provide comprehensive counseling to prospective and current students
6694 and their families, assisting them in the financial aid application process and presenting them with
6695 financing options outside of need-based financial aid. This last component of the program has three
6696 main goals:

6697 1. Improve the perception of the University as affordable.

6698 2. Increase the socio-economic diversity of the University.

6699 *3. Improve student understanding of financial planning and debt management.*

6700 The University's financial aid educational programs are currently being designed. We expect to
6701 measure trends in the following ways in order to gage success: 1) usage figures of educational
6702 programs provided on financial planning and debt management, 2) percent of financial aid applicants
6703 participating in financial management programs, and 3) evaluation of effectiveness of the educational
6704 programs.

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6705 The Commonwealth and the University agree that this commitment meets the requirements of 6706 subsection B of § 23-38.104 of the Act.

6707 SECTION 2.3. Authority Granted to The University of Virginia's College at Wise. The College shall 6708 receive the benefits of the additional financial and operational authority granted by this Management 6709 Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits M through R are 6710 implemented by the University on behalf of the College, but the College shall not receive any additional 6711 independent financial or operational authority as a result of this Management Agreement or the 6712 attached Board of Visitors policies beyond the independent financial and operational authority that it 6713 had prior to the effective date of this Management Agreement or that it may be granted by law in the 6714 future.

6715 SECTION 2.4. Other Law. As provided in subsection B of § 23-38.91 of the Act, the University **6716** shall be governed and administered in the manner provided not only in this Management Agreement, but **6717** also as provided in the Appropriation Act then in effect and the University's Enabling Legislation.

6718 SECTION 2.4.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant
6719 to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is
6720 a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act,
6721 or this Management Agreement, or the Board of Visitors policies attached to this Management
6722 Agreement as Exhibits M through R, the provisions of the Appropriation Act shall control, and shall
6723 continue to control unless provided otherwise by law.

6724 SECTION 2.4.2. The University's Enabling Legislation. As provided in subsection C of § 23-38.91 of
6725 the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University's
6726 Enabling Legislation, the Enabling Legislation shall control, except as provided in subdivision A.1.b of
6727 § 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 6728 6729 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, 6730 6731 supervision, regulation, and control of public institutions of higher education shall be applicable to the 6732 University as provided by the express terms of this Management Agreement. As further provided in 6733 subsection C of § 23-38.92 of the Act, in the event of conflict between any provision of Title 2.2 and any 6734 provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this 6735 Management Agreement shall control.

6736 SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of 6737 § 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, 6738 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, 6739 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 6740 of Virginia, the University shall remain a public institution of higher education of the Commonwealth 6741 following the effective date of this Management Agreement, and shall retain the authority granted and 6742 any obligations required by such provisions, unless and until provided otherwise by law other than the 6743 Act. In addition, the University shall retain the authority, and any obligations related to the exercise of 6744 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.), 6745 6746 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 6747 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 6748 6749 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 6750 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.

6756 SECTION 2.4.6. Conflicts of Interests. As provided in § 23-38.96 of the Act, the provisions of the **6757** State and Local Government Conflict of Interests Act, Chapter 32 (§ 2.2-3100 et seq.) that are **6758** applicable to officers and employees of a state governmental agency shall continue to apply to the **6759** members of the Board of Visitors of the University and to its Covered Employees.

6760 SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other
6761 powers and authorities granted to the University pursuant to any other sections of the Code of Virginia,
6762 including other provisions of the Act, are not affected by this Management Agreement or the Board
6763 policies attached hereto as Exhibits M through R.

6764 ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, 6765 MANAGEMENT AGREEMENT.

6766 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 6767 6768 of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on 6769 Finance and the House Committee on Appropriations and shall be posted on the University's website. 6770 The change or deviation shall become effective unless one of the above persons notifies the University in 6771 writing within 60 days that the change or deviation is substantial and material. Any substantial and 6772 material change or deviation shall require the execution by the parties of an amendment to this 6773 Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of 6774 § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to 6775 subdivision D 4 of § 23-38.88 of the Act.

6776 SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.

6777 SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § 23-38.88, and § 23-38.98, of the Act, if 6778 the Governor makes a written determination that the University is not in substantial compliance with the 6779 terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the 6780 6781 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 6782 6783 substantial compliance with the terms of this Management Agreement and with the requirements of the 6784 Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of 6785 the General Assembly. If after a reasonable period of time after the corrective action plan has been 6786 implemented by the University, the Governor determines that the institution is not yet in substantial 6787 compliance with this Management Agreement or the requirements of the Act, the Governor may void this 6788 Management Agreement. Upon the Governor voiding this Management Agreement, the University shall 6789 no longer be allowed to exercise any restructured financial or operational authority pursuant to the 6790 provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent 6791 management agreement with the Secretary or Secretaries designated by the Governor or the voided 6792 Management Agreement is reinstated by the General Assembly.

6793 SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § 23-38.88 of the Act, the **6794** General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to **6795** § 23-38.98 of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the **6796** Act may be revoked by an act of the General Assembly (i) if the University fails to meet the **6797** requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this **6798** Management Agreement.

6799 ARTICLE 4. GENERAL PROVISIONS.

6813

6800 SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied,6801 shall be construed as conferring any third-party beneficiary status on any person or entity.

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

6807 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June **6808** 30, 2010.

6809 WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of
6810 November, 2005, and shall become effective on the effective date of legislation enacted into law
6811 providing for the terms of such Agreement.
6812

EXHIBIT M

0814	
6815	MANAGEMENT AGREEMENT
6816	BETWEEN
6817	THE COMMONWEALTH OF VIRGINIA
6818	AND
6819	THE UNIVERSITY OF VIRGINIA
6820	PURSUANT TO
6821	THE RESTRUCTURED HIGHER EDUCATION
6822	FINANCIAL AND ADMINISTRATIVE OPERATIONS
6823	ACT OF 2005
6824	
6825	POLICY GOVERNING CAPITAL PROJECTS
6826	

6827 6828

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING CAPITAL PROJECTS

6829 I. PREAMBLE.

6830 Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, 6831 respectively) delegated limited but significant autonomy to the University of Virginia to establish its own 6832 post-appropriation system for undertaking the implementation of non-general fund capital projects for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act, delegated 6833 6834 nearly identical limited autonomy to the University as a whole for non-general fund capital projects. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of 6835 6836 Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the Existing Policy 6837 Statement).

6838 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 6839 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the 6840 University may be delegated the authority to establish its own system for undertaking the implementation In general, status as a Covered Institution is designed to replace the 6841 of its capital projects. 6842 post-authorization system of reviews, approvals, policies and procedures carried out by a variety of 6843 central State agencies, and also the traditional pre-authorization approval process for projects funded 6844 entirely with non-general funds and without any proceeds from State Tax Supported Debt. The 6845 University's system for carrying out its capital outlay process as a Covered Institution is to be governed 6846 by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the 6847 Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition 6848 of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, 6849 Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted 6850 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. 6851

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.

6858 *II. DEFINITIONS.*

6859 As used in this policy, the following terms shall have the following meanings, unless the context 6860 requires otherwise:

6861 "Academic Division" means that part of the University known as (State Agency 207).

6862 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 6863 Chapter 4.10 of Title 23 of the Code of Virginia.

6864 "Board of Visitors" or "Board" means the Rector and Visitors of the University of Virginia.

6865 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting 6866 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

6867 "Capital Professional Services" means professional engineering, architecture, land surveying and **6868** landscape architecture services related to capital projects.

- (6869 "Capital project(s)" means the acquisition of any interest in land, including improvements on the
 (6870 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital
 (6871 Leases.
- **6872** "College" means that part of the University operated as the University of Virginia's College at Wise, also known as (State Agency 246).
- 6874 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
 6875 public institution of higher education of the Commonwealth of Virginia that has entered into a
 6876 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the
 6877 Act.
- (6878 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
 (6879 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
 (6880 missions of the individual public institutions of higher education of the Commonwealth, and as provided
 (6881 in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.
- **6882** "Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation **6883** Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.
- (6884 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
 (6885 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
 (6886 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.
- **6887** "Medical Center" means that part of the University consisting of the University of Virginia Medical

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6888 Center (State Agency 209), and related health care and health maintenance facilities.

6889 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 6890 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 6891 general government funds, as defined in the December 20, 2004 Report to the Governor and General

6892 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time. 6893 "University" means the University of Virginia, consisting of the Academic Division, the College, and

6894 the Medical Center. 6895

III. SCOPE OF POLICY.

6896 This Policy applies to the planning and budget development for capital projects, capital project 6897 authorization, and the implementation of capital projects, whether funded by a general fund 6898 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other 6899 sources.

6900 This Policy provides guidance for 1) the process for developing one or more capital project 6901 programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital 6902 projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land 6903 6904 acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting 6905 requirements.

6906 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

6907 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 6908 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 6909 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 6910 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 6911 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the 6912 6913 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 6914 and procedures. 6915 V. CAPITAL PROGRAM.

6916 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt 6917 a system for developing one or more capital project programs that defines or define the capital needs of 6918 the University for a given period of time consistent with the University's published Master Plan. This 6919 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be 6920 6921 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from 6922 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if 6923 6924 circumstances warrant.

6925 It shall be University policy that each capital project program shall meet the University's mission 6926 and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be 6927 University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility 6928 6929 standards as well as the University's design guidelines and standards, and costed to reflect current costs 6930 and escalated to the mid-point of anticipated construction. 6931

VI. AUTHORIZATION OF CAPITAL PROJECTS

6932 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its 6933 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief 6934 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other 6935 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund 6936 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 6937 Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests. 6938

6939 It shall be the policy of the University that the implementation of capital projects shall be carried 6940 out so that the capital project as completed is the capital project approved by the Board for Major 6941 Capital Projects and according to the procedures adopted by the President, acting through the 6942 Executive Vice President and Chief Operating Officer, for all other capital projects. The President, 6943 acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence 6944 to this requirement.

6945 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond 6946 the plans and justifications that were the basis for the capital project's approval, either before or during 6947 construction, unless approved in advance as described above. Minor changes shall be permissible if 6948 they are determined by the President, acting through the Executive Vice President and Chief Operating

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6949 *Officer, to be justified.*

6950 *Major Capital Projects may be submitted for Board of Visitors authorization at any time but must* 6951 *include a statement of urgency if not part of the approved Major Capital Project program.*

6952 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 6953 SERVICES.

6954It shall be the policy of the University that procurements shall result in the purchase of high quality6955services and construction at reasonable prices and shall be consistent with the Policy Governing the6956Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials6957adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and6958Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed6959to:

6960 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;

6962 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the 6963 appearance of any impropriety prohibited by State law or University policy;

6964 *Making procurement rules clear in advance of any competition;*

6965 Providing access to the University's business to all qualified vendors, firms and contractors, with no 6966 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage 6967 in cooperative procurements and to meet special needs of the University;

6968 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
6969 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
6970 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
6971 necessary to the contractor's normal operations; and

- 6972 Providing for a non-discriminatory procurement process, and including appropriate and lawful
 6973 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small
 6974 businesses and to promote and encourage a diversity of suppliers.
- **6975** 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:

6978 A system of competitive negotiation for Capital Professional Services, including a procedure for
6979 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,
6980 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of
6981 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;
6982 A prequalification procedure for contractors or products;

6983 A procedure for special construction contracting methods, including but not limited to design-build

6984 and construction management contracts; and

6985 *A prompt payment procedure.*

6986 The University also may enter into cooperative arrangements with other private or public health or
6987 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,
6988 in the judgment of the University, the purposes of this Policy will be furthered.

6989 VIII. DESIGN REVIEWS AND CODE APPROVALS.

6990 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final 6991 Major Capital Project authorization based on the size, scope and cost estimate provided with the 6992 design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall 6993 be required. For all capital projects other than Major Capital Projects, the President, acting through 6994 the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and 6995 project authorization based on the size, scope and cost estimate provided with the design. It shall be 6996 the University's policy that all capital projects shall be designed and constructed in accordance with 6997 applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable 6998 accessibility code.

6999 The President, acting through the Executive Vice President and Chief Operating Officer, shall 7000 designate a Building Official responsible for building code compliance by either (i) hiring an individual 7001 to be the University Building Official, or (ii) continuing to use the services of the Department of 7002 General Services, Division of Engineering and Buildings, to perform the Building Official function. If 7003 option (i) is selected, the individual hired as the University Building Official shall be a full-time 7004 employee, a registered professional architect or engineer, and certified by the Department of Housing 7005 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, 7006 7007 and shall determine the suitability for occupancy of, and shall issue certifications for building 7008 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 7009

7010 project and that such capital project has been inspected by the State Fire Marshal or his designee. 7011 When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it 7012 7013 shall fulfill the code review requirement by maintaining a review unit supported by resources and staff 7014 who are certified by the Department of Housing and Community Development in accordance with 7015 § 36-137 of the Code of Virginia, for such purpose and who shall review plans, specifications and 7016 documents for compliance with building codes and standards and perform required inspections of work 7017 in progress and the completed capital project. No individual licensed professional architect or engineer 7018 hired or contracted with to perform these functions shall also perform other building code-related 7019 design, construction, facilities-related project management or facilities management functions for the 7020 University on the same capital project. 7021

IX. ENVIRONMENTAL IMPACT REPORTS.

7022 It shall be the policy of the University to assess the environmental, historic preservation, and 7023 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts 7024 to the extent practicable. The University shall develop a procedure for the preparation and approval of 7025 environmental impact reports for capital projects, in accordance with State environmental, historic 7026 preservation, and conservation requirements generally applicable to capital projects otherwise meeting 7027 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of 7028 \$300,000 or more. 7029

X. BUILDING DEMOLITIONS.

7030 It shall be the policy of the University to consider the environmental and historical aspects of any 7031 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.

The University shall develop a procedure for the preparation and review of demolition requests, 7032 7033 including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to 7034 capital projects in the Commonwealth. Further, for any property that was acquired or constructed with 7035 funding from a general fund appropriation of the General Assembly or from proceeds from State Tax 7036 7037 Supported Debt, general laws applicable to State owned property shall apply. 7038

XI. BUILDING OR LAND ACQUISITIONS.

7039 It is the policy of the University that capital projects involving building or land acquisition shall be 7040 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real 7041 property. The President, acting through the Executive Vice President and Chief Operating Officer, shall 7042 ensure that the project management system implemented pursuant to Section XIII below provides for a 7043 review and analysis of all pertinent matters relating to the acquisition of buildings and land as any 7044 prudent purchaser would perform to the end that any building or land acquired by the University shall 7045 be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated 7046 7047 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 7048 7049 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies 7050 pertaining to the acquisition of buildings or land for capital projects are carried out. 7051

A. Environmental and Land Use Considerations.

7052 It is the policy of the University to reasonably cooperate with each locality affected by the 7053 acquisition. Such cooperation shall include but not be limited to furnishing any information that the 7054 locality may reasonably request and reviewing any requests by the locality with regard to any such 7055 The University shall consider the zoning and comprehensive plan designation by the acquisition. 7056 locality of the building or land and surrounding parcels, as well as any designation by State or federal 7057 agencies of historically or archeologically significant areas on the land. Nothing herein shall be 7058 construed as requiring the University to comply with local zoning laws and ordinances. 7059

B. Infrastructure and Site Condition.

7060 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure 7061 that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following 7062 7063 matters prior to acquisition of the building or land: that any land can be developed for its intended 7064 purpose without extraordinary cost; that an environmental engineer has been engaged by the University 7065 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services 7066 7067 to the land are adequate or can reasonably be provided or have been provided in the case of building 7068 acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems. 7069 7070

C. Title and Survey.

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7071 A survey shall be prepared for any real property acquired, and an examination of title to the real 7072 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title 7073 insurance shall be procured from a title insurance company authorized to do business in the 7074 Commonwealth. Based upon the survey and title examination or report, the President, acting through 7075 the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real 7076 property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, 7077 encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse 7078 effect upon the University's ability to own, occupy, convey or develop the real property.

7079 D. Appraisal.

7131

7080 An appraisal shall be conducted of the real property to be acquired to determine its fair market
7081 value and the consistency of the fair market value with the price agreed upon by the University.
7082 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.

7088 XIII. PRÔJECT MANAGEMENT SYSTEMS.

7089 The President, acting through the Executive Vice President and Chief Operating Officer, shall
7090 implement one or more systems for the management of capital projects for the University. The systems
7091 may include the delegation of project management authority to appropriate University officials,
7092 including a grant of authority to such officials to engage in further delegation of authority as the
7093 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 **7097** grounds.

7098 The project management systems may include one or more reporting systems applicable to capital
7099 projects whereby University officials responsible for the management of such projects provide
7100 appropriate and timely reports to the President, acting through the Executive Vice President and Chief
7101 Operating Officer, on the status of such projects during construction.

7102 XIV. REPORTING REQUIREMENTS.

7103 In addition to complying with any internal reporting systems contained in the University's project 7104 management systems, as described in Section XIII above, the University shall comply with State 7105 reporting requirements for those Major Capital Projects funded entirely or in part by a general fund 7106 appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project 7107 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 7108 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 7109 7110 0

	appropriated by the General Hissenberg and, if the cost of such improvements of renovations a
7111	reasonably expected to exceed two million dollars, the decision to undertake such improvements of
7112	renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine
7113	the President, acting through the Executive Vice President and Chief Operating Officer, shall report to
7114	the Department of General Services on the status of such capital projects at the initiation of the project
7115	prior to the commencement of construction, and at the time of acceptance of any such capital project.
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7119	MANAGEMENT AGREEMENT
7120	BETWEEN
7121	THE COMMONWEALTH OF VIRGINIA
7122	AND
7123	THE UNIVERSITY OF VIRGINIA
7124	PURSUANT TO
7125	THE RESTRUCTURED HIGHER EDUCATION
7126	FINANCIAL AND ADMINISTRATIVE OPERATIONS
7120	ACT OF 2005
7128	
7129	POLICY GOVERNING
7130	LEASES OF REAL PROPERTY
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118 of 162 THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA 7132 7133 POLICY GOVERNING LEASES OF REAL PROPERTY 7134 I. PREAMBLE. 7135 In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases 7136 of Property for certain leases entered into by the University, which was amended in 2003 as the Policy 7137 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 7138 7139 (§ 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 7140 7141 of real property. The University's system for implementing this authority is to be governed by policies 7142 adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitor's policies regarding Leases of real property entered into by the University. 7143 This Policy is intended to cover the authority that may be granted to the University pursuant to 7144 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the 7145 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 7146 7147 7148 Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center 7149 by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, 7150 are not affected by this Policy. 7151 II. DEFINITIONS. 7152 The following words and terms, when used in this Policy, shall have the following meaning unless 7153 the context clearly indicates otherwise: "Academic Division" means that part of the University known as (State Agency 207). 7154 7155 "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. 7156 "Board of Visitors" means the Rector and Visitors of the University of Virginia. 7157 7158 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting 7159 Principles pursuant to the pronouncement of the Financial Accounting Standards Board. 7160 "College" means that part of the University operated as the University of Virginia's College at Wise, 7161 also known as (State Agency 246). 7162 "Covered Institution" means a public institution of higher education of the Commonwealth of 7163 Virginia that has entered into a Management Agreement with the Commonwealth to be governed by 7164 Subchapter 3 of the Act. 7165 "Expense Lease" means an Operating Lease of real property under the control of another entity to 7166 the University. 7167 "Income Lease" means an Operating Lease of real property under the control of the University to 7168 another entity. "Lease" or "Leases" means any type of lease involving real property. 7169 "Medical Center" means that part of the University consisting of the University of Virginia Medical 7170 7171 Center, known as (State Agency 209), and related health care and health maintenance facilities. 7172 "Operating Lease" means any lease involving real property, or improvements thereon, that is not a 7173 Capital Lease. "University" means the University of Virginia, consisting of the Academic Division, the College, and 7174 7175 the Medical Center. 7176 III. SCOPE OF POLICY. 7177 This Policy provides guidance for the implementation of all University Leases. 7178 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY. 7179 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 7180 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 7181 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 7182 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 7183 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 7184 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 7185 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 7186 and procedures. 7187 V. REQUIREMENTS FOR LEASES. 7188 A. Factors to Be Considered When Entering into Leases.

7189 All Leases shall be for a purpose consistent with the mission of the University. The decision to enter
7190 into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy,
7191 consideration of all costs of occupancy, and a determination that the use of the property to be leased is
7192 necessary and is efficiently planned. Leases shall also conform to the space planning procedures that

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7193	may be adopted by the President, acting through the Executive Vice President and Chief Operating
7194 7195	Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the
7195	space is intended. B. Competition to Be Sought to Maximum Practicable Degree.
7197	Competition shall be sought to the maximum practicable degree for all Leases. The President, acting
7198	through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases
7199 7200	are procured through competition to the maximum degree practicable and to determine when, under avidelings that may be developed and adopted by the President acting through the Frequetine Vice
7200	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.
7202	C. Approval of Form of Lease Required.
7203	The form of Leases entered into by the University shall be approved by the University's legal
7204	counsel.
7205 7206	D. Execution of Leases. All Leases entered into by the University shall be executed only by those University officers or
7200	persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as
7208	may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as
7209	may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital
7210 7211	Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University no other University approved shall be required for leases or leasing nor state approved
7212	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
7213	accordance with §§ 23-38.109 and 23-38.112 of the Act.
7214	E. Capital Leases.
7215	The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization
7216 7217	process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.
7218	<i>F. Compliance with Applicable Law.</i>
7219	All Leases of real property by the University shall be consistent with any requirements of law that
7220	are contained in the Act or are otherwise applicable.
7221 7222	G. Certification of Occupancy. All real property covered by an Expense Lease or leased by the University under a Capital Lease
7223	shall be certified for occupancy by the appropriate public body or building official.
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7225	EXHIBIT O
	EXHIBIT O MANAGEMENT AGREEMENT
7225 7226 7227 7228	MANAGEMENT AGREEMENT BETWEEN
7225 7226 7227 7228 7229	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA
7225 7226 7227 7228 7229 7230	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND
7225 7226 7227 7228 7229 7230 7231 7232	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO
7225 7226 7227 7228 7229 7230 7231 7232 7233	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235	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
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238	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
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239	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
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240	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
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7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240 7241 7242 7243	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
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240 7241 7242 7243 7244	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COMMONWEALTH OF VIRGINIA DURSUANT TO 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
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240 7241 7242 7243 7244 7245	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
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240 7241 7242 7243 7244 7245 7246 7247	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COMMONWEALTH OF VIRGINIA DURSUANT TO 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
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240 7241 7242 7243 7244 7245 7246 7247 7248	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005 POLICY GOVERNING INFORMATION TECHNOLOGY THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING INFORMATION TECHNOLOGY I. PREAMBLE. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2 of the Code of Virginia; provided, however, that the governing body of [such] institution shall
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240 7241 7242 7243 7244 7245 7246 7247 7248 7249	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005 POLICY GOVERNING INFORMATION TECHNOLOGY THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING INFORMATION TECHNOLOGY I. PREAMBLE. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2 of the Code of Virginia; provided, however, that the governing body of [such] institution shall adopt, and [such] institution shall comply with, policies" that govern the exempted provisions. See
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240 7241 7242 7243 7244 7245 7244 7245 7246 7247 7248 7249 7250	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005 POLICY GOVERNING INFORMATION TECHNOLOGY THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING INFORMATION TECHNOLOGY I. PREAMBLE. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2 of the Code of Virginia. This Information Technology Policy shall become effective upon
7225 7226 7227 7228 7229 7230 7231 7232 7233 7234 7235 7236 7237 7238 7239 7240 7241 7242 7243 7244 7245 7246 7247 7248 7249	MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005 POLICY GOVERNING INFORMATION TECHNOLOGY THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING INFORMATION TECHNOLOGY I. PREAMBLE. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2 of the Code of Virginia; provided, however, that the governing body of [such] institution shall adopt, and [such] institution shall comply with, policies" that govern the exempted provisions. See

7254 Technology Policy pursuant to § 23-38.111 of the Code of Virginia.

7255 II. DEFINITIONS.

7256 As used in this Information Technology Policy, the following terms have the following meanings, 7257 unless the context requires otherwise:

7258 "Academic Division" means that part of the University known as (State Agency 207).

7259 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 7260 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7261 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia. 7262 "College" means that part of the University operated as the University of Virginia's College at Wise, 7263 also known as (State Agency 246).

7264 "Information Technology" or "IT" shall have the same meaning as set forth in § 2.2-2006 of the 7265 Code of Virginia as it currently exists and from time to time may be amended.

"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. 7266 7267 "Medical Center" means that part of the University consisting of the University of Virginia Medical 7268 7269 Center, known as (State Agency 209), and related health care and health maintenance facilities.

7270 "Policy" means this Information Technology Policy adopted by the Board of Visitors.

7271 "State Chief Information Officer" or "State CIO" means the Chief Information Officer of the 7272 Commonwealth of Virginia.

7273 "University" means the University of Virginia, consisting of the Academic Division, the College, and 7274 the Medical Center. 7275

III. SCOPE OF POLICY.

7276 This Policy is intended to cover and implement the authority that may be granted to the University of 7277 Virginia pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect 7278 any other powers and authorities granted to the University pursuant to the Appropriation Act and the 7279 Code of Virginia, including other provisions of the Act or the University's enabling legislation as that 7280 term is defined in § 23-38.89 of the Act. In particular, other powers and authorities granted to the 7281 University of Virginia Medical Center by law, to the extent they exceed those granted to the University 7282 pursuant to Subchapter 3 of the Act, are not affected by this Policy.

7283 This Policy shall govern the University's information technology strategic planning, expenditure 7284 reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and 7285 audits conducted within, by, or on behalf of the University. Upon the effective date of a Management 7286 Agreement between the Commonwealth and the University, as authorized by subsection D of § 23-38.88 7287 and § 23-38.111, therefore, the University shall be exempt from those provisions of the Code of Virginia, 7288 including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter 24 7289 7290 of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology 7291 strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, 7292 ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, 7293 however, that the University still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005 et 7294 seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information 7295 Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to 7296 public institutions of higher education of the Commonwealth and that do not govern information 7297 technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, 7298 architecture, ongoing operations, security, and audits within, by, or on behalf of the University.

7299 The procurement of information technology and telecommunications goods and services, including 7300 automated data processing hardware and software, shall be governed by the Policy Governing the 7301 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 7302 approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and 7303 Construction that are incorporated in and attached to that Policy. 7304

IV. GENERAL PROVISIONS.

A. Board of Visitors Accountability and Delegation of Authority.

7306 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 7307 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 7308 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 7309 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 7310 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 7311 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 7312 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 7313 and procedures.

7314 B. Strategic Planning.

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7315 The President, acting through the Executive Vice President and Chief Operating Officer, shall be
7316 responsible for overall IT strategic planning at the University, which shall be linked to and in support
7317 of the University's overall strategic plan.

7318 At least 45 days prior to each fiscal year, the President, acting through the Executive Vice President
7319 and Chief Operating Officer, shall make available the University's IT strategic plan covering the next
7320 fiscal year to the State CIO for his review and comment with regard to the consistency of the
7321 University's plan with the intent of the currently published overall five-year IT strategic plan for the
7322 Commonwealth developed by the State CIO pursuant to § 2.2-2007 of the Code of Virginia, and into
7323 which the University's plan is to be incorporated.

7324 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.

7330 By October 1 of each year, the President, acting through the Executive Vice President and Chief
7331 Operating Officer, shall make available to the State CIO and the Information Technology Investment
7332 Board a report on the previous fiscal year's IT expenditures.

7333 The University shall be specifically exempt from:

7334 Subdivision Å 4 of § 2.2-2007 of the Code of Virginia (review by the State CIO of IT budget **7335** requests), as it currently exists and from time to time may be amended;

7336 §§ 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

7338 Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting 7339 and budgeting, as it currently exists and from time to time may be amended.

7340 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.

7354 On a quarterly basis, the President, acting through the Executive Vice President and Chief Operating
7355 Officer, shall report to the Information Technology Investment Board on the budget, schedule, and
7356 overall status of the University's major IT projects. This requirement shall not apply to research
7357 projects, research initiatives, or instructional programs.

- **7358** The President, acting through the Executive Vice President and Chief Operating Officer, shall be **7359** responsible for decisions to substantially alter a project's scope, budget, or schedule after initial **7360** approval.
- **7361** *The University shall be specifically exempt from:*
- 7362 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project
 7363 management), as it currently exists and from time to time may be amended;
- **7364** §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management), **7365** as they currently exist and from time to time may be amended; and
- 7366 Any other substantially similar provision of the Code of Virginia governing IT project management, 7367 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.

7373 E. Infrastructure, Architecture, Ongoing Operations, and Security.

7374 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines **7375** related to IT infrastructure, architecture, ongoing operations, and security developed by the

7376 Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific 7377 circumstances of the University. Copies of the policies shall be made available to the Information 7378 Technology Investment Board. 7379 The President, acting through the executive Vice President and Chief Operating Officer, shall be 7380 responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended 7381 and revised from time to time. 7382 For purposes of implementing this Policy, the President shall appoint an existing University 7383 employee to serve as a liaison between the University and the State CIO. 7384 F. Audits. 7385 Pursuant to § 23-38.111 of the Act, the Board shall adopt the policies, standards, and guidelines 7386 developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing 7387 association, appropriately tailored to the specific circumstances of the University, which provide for 7388 Independent Validation and Verification (IV&V) of the University's major IT projects. Copies of the 7389 policies, standards, and guidelines, as amended and revised from time to time, shall be made available 7390 7391 to the Information Technology Investment Board. 7392 Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, 7393 architecture, ongoing operations, and security, shall also be the responsibility of the University's 7394 Internal Audit Department and the Auditor of Public Accounts. 7395 7396 EXHIBIT P 7397 MANAGEMENT AGREEMENT 7398 7399 BETWEEN 7400 THE COMMONWEALTH OF VIRGINIA 7401 AND THE UNIVERSITY OF VIRGINIA 7402 7403 PURSUANT TO 7404 THE RESTRUCTURED HIGHER EDUCATION 7405 FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005 7406 7407 7408 POLICY GOVERNING 7409 THE PROCUREMENT OF GOODS, SERVICES, INSURANCE, AND CONSTRUCTION AND 7410 7411 THE DISPOSITION OF SURPLUS MATERIALS THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA 7412 POLICY GOVERNING THE PROCUREMENT OF 7413 GOODS, SERVICES, INSURANCE AND CONSTRUCTION 7414 AND THE DISPOSITION OF SURPLUS MATERIALS 7415 7416 I. PREAMBLE. 7417 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 7418 and services, including professional services, and construction, on behalf of the University of Virginia 7419 Medical Center. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing 7420 Exercise of Procurement Autonomy by the University on behalf of the Medical Center. Subchapter 3 of 7421 7422 the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 7423 (§ 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 7424 7425 goods, services, insurance, and construction, and for the independent disposition of surplus materials by 7426 public or private transaction.

7427 B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of
7428 Visitors for the procurement of goods, services, insurance, and construction, and the disposition of
7429 surplus materials. The provisions of this Policy set forth below, together with the Rules Governing
7430 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1,
7431 constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods,
7432 services, insurance, and construction, and the disposition of surplus materials by the University.

7433 C. This Policy is intended to cover the authority that may be granted to the University pursuant to
7434 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any
7435 other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and
7436 the University's Enabling Legislation are not affected by this Policy. In particular, other powers and

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7437 authorities granted to the Medical Center by law, to the extent they exceed those granted to the

7438 University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

7439 II. DEFINITIONS.

- 7440 As used in this Policy, the following terms shall have the following meanings, unless the context 7441 requires otherwise:
- 7442 "Academic Division" means that part of the University known as (State Agency 207).
- 7443 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 7444 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
- 7445 "Agreement" means "Management Agreement."
- "Board of Visitors" means the Rector and Visitors of the University of Virginia. 7446
- 7447 "College" means that part of the University operated as the University of Virginia's College at Wise, 7448 also known as (State Agency 246).
- 7449 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement 7450 with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that 7451 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of 7452 Subchapter 3 of the Act.
- 7453 "Effective Date" means the effective date of the Management Agreement.
- 7454 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of 7455 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and 7456 missions of the individual public institutions of higher education of the Commonwealth, and as provided 7457 in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.
- 7458 'Existing Medical Center Policy Statement" means the Policy Statement Governing Exercise of 7459 Procurement Autonomy by the University on behalf of the Medical Center adopted in 1996 by the Board 7460 of Visitors for the Medical Center.
- "Goods" means all material, equipment, supplies, and printing, including information technology and 7461 7462 telecommunications goods such as automated data processing hardware and software.
- 7463 "Management Agreement" means the agreement required by subsection D of § 23-38.88 between the 7464 Commonwealth of Virginia and the University of Virginia.
- 7465 "Medical Center" means that part of the University consisting of the University of Virginia Medical 7466 Center, known as (State Agency 209), and related health care and health maintenance facilities.
- 7467 "Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction" 7468 attached to this Policy as Attachment 1.
- 7469 "Services" as used in this Policy means any work performed by an independent contractor wherein 7470 the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of 7471 equipment, materials and supplies, and shall include both professional services, which include the 7472 practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and 7473 nonprofessional services, which include any service not specifically identified as professional services.
- 7474 "Surplus materials" means personal property including, but not limited to, materials, supplies, 7475 equipment and recyclable items, that are determined to be surplus by the University.
- 7476 "University" means the University of Virginia, consisting of the Academic Division, the College, and 7477 the Medical Center.
- 7478 III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
- 7479 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 7480 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 7481 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 7482 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 7483 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 7484 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 7485 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 7486 and procedures. 7487
 - IV. GENERAL PROVISIONS.
- 7488 A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement 7489 Policies.
- 7490 The Academic Division and the College, through its administrative relationship with the University, 7491 have had decentralization and pilot program autonomy in many procurement functions and activities 7492 since the Appropriation Act of 1994. Effective July 1, 1996, the University was granted autonomy to 7493 establish a procurement system for the Medical Center, and the Board of Visitors approved the Existing 7494 Medical Center Policy Statement. The Act extends and reinforces the autonomy previously granted to 7495 the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the 7496 Board of Visitors to enable the University to develop a procurement system for the Academic Division 7497 and the College, as well as a surplus materials disposition system for the University as a whole, and to

7498 continue the existing procurement system and policies of the Medical Center. Any University electronic 7499 procurement system, other than the Medical Center's electronic procurement system, shall integrate or 7500 interface with the Commonwealth's electronic procurement system.

This Policy shall be effective on the Effective Date of the University's initial Management Agreement 7501 7502 with the Commonwealth. The implementing policies and procedures adopted by the President, acting 7503 through the Executive Vice President and Chief Operating Officer or his designee, to implement this 7504 Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the University, including policies regarding the nature and amounts of procurements 7505 7506 that may be undertaken without the approval of the Board of Visitors, or of the President, acting 7507 through the Executive Vice President and Chief Operating Officer. 7508

B. Scope and Purpose of University Procurement Policies.

7509 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be 7510 the policy of the University that procurements conducted by the University result in the purchase of high 7511 quality goods and services at reasonable prices, and that the University be free, to the maximum extent 7512 permitted by law and this Policy, from constraining policies that hinder the ability of the University to do business in a competitive environment. This Policy, together with the Rules Governing Procurement 7513 7514 of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to 7515 all procurements undertaken by the University, regardless of the source of funds. 7516

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

7517 The University is committed to developing, maintaining, and sustaining collaboration, 7518 communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, 7519 particularly with the Offices of the Secretaries of Administration and Technology, the Department of 7520 General Services, and the Virginia Information Technologies Agency. Identifying business objectives and 7521 goals common to both the University and the Commonwealth and the mechanisms by which such 7522 objectives and goals may be jointly pursued and achieved are among the desired outcomes of such 7523 collaboration, communication, and cooperation. 7524

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

7525 The University is committed to maximizing its internal operational efficiencies, economies of scale 7526 among institutions of higher education, and the leveraged buying power of the Commonwealth as a 7527 whole. 7528

Consistent with this commitment, the University:

7529 i) May purchase from and participate in all statewide contracts for goods and services, including 7530 information technology goods and services, except that the University shall purchase from and 7531 participate in contracts for communications services and telecommunications facilities entered into by 7532 the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia, unless an 7533 exception is provided in the Appropriation Act or by other law, and provided that orders not placed 7534 through statewide contracts shall be processed directly or by integration or interface through the 7535 *Commonwealth's electronic procurement system;*

7536 ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement 7537 system and comply with the business plan for the Commonwealth's electronic procurement system, as 7538 modified by an agreement between the Commonwealth and the University, which agreement shall not be 7539 substantially different that the agreement attached to this Policy as Attachment 2; and

7540 iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is 7541 consistent with the Commonwealth's SWAM program. 7542

E. Implementation.

7543 To effect its implementation under the Act, and if the University remains in continued substantial 7544 compliance with the terms and conditions of this Management Agreement with the Commonwealth 7545 pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the University's 7546 procurement of goods, services, insurance, and construction, and the disposition of surplus materials 7547 shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2, except § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et. seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency 7548 7549 7550 7551 requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ 2.2-1124 and 2.2-1125; the requirement to purchase from the 7552 7553 Department for the Blind and Vision Impaired (VIB) (§ 2.2-1117); and any other state statutes, rules, 7554 regulations or requirements relating to the procurement of goods, services, insurance, and construction, 7555 including but not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the 7556 duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department 7557 of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the review and the oversight by the Division of Engineering and Buildings of the 7558

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- 7559 Virginia Department of General Services of contracts for the construction of University capital projects 7560 and construction-related professional services (§ 2.2-1132).
- 7561 V. UNIVERSITY PROCUREMENT POLICIES.
- 7562 A. General Competitive Principles.

7563 In connection with University procurements and the processes leading to award of contracts for 7564 goods, services, insurance, and construction, the University is committed to:

7565 Seeking competition to the maximum practical degree, taking into account the size of the anticipated 7566 procurement, the term of the resulting contract and the likely extent of competition;

7567 Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or 7568 the appearance of any impropriety;

7569 Making procurement rules clear in advance of any competition;

7570 Providing access to the University's business to all qualified vendors, firms and contractors, with no 7571 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage 7572 in cooperative procurements and to meet special needs of the University;

7573 Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular 7574 vendor; and

7575 Providing for the free exchange of information between the University, vendors, firms or contractors 7576 concerning the goods or services sought and offered while preserving the confidentiality of proprietary 7577 information.

7578 B. Access to Records.

7579 Procurement records shall be available to citizens or to interested persons, firms or corporations in 7580 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et 7581 seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to 7582 § 2.2-3705.1 (7), 2.2-3705.1 (12), or 2.2-3705.4 (4), or other applicable exemptions of the Virginia 7583 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act. 7584

C. Cooperative Procurements and Alliances.

7585 In circumstances where the University determines and documents that statewide contracts for goods 7586 and services, including information technology and telecommunications goods and services, do not 7587 provide goods and services to the University that meet its business goals and objectives, the University 7588 is authorized to participate in cooperative procurements with other public or private organizations or 7589 entities, including other educational institutions, public-private partnerships, public bodies, charitable 7590 organizations, health care provider alliances and purchasing organizations, so long as the resulting 7591 contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing 7592 Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 7593 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative 7594 contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, 7595 7596 Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by 7597 other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the 7598 above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's 7599 electronic procurement system, including the requirement for payment of applicable fees. By October 1 7600 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, 7601 shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit 7602 and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and 7603 alliances entered into or used during the prior fiscal year.

D. Training; Ethics in Contracting. 7604

7605 The President, acting through the Executive Vice President and Chief Operating Officer, shall take 7606 all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged 7607 in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of 7608 the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only 7609 7610 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 7611 7612 engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.

7613 The University shall maintain an ongoing program to provide professional development opportunities 7614 to its buying staff and to provide methods training to internal staff who are engaged in placing 7615 decentralized small purchase transactions.

7616 E. Ethics and University Procurements.

7617 In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting 7618 7619 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title

7620 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 7621 7622 seq.) of Chapter 12 of Title 18.2.

7623 VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

7624 The policy and procedures for disposal for surplus materials shall provide for the sale, 7625 environmentally-appropriate disposal, or recycling of surplus materials by the University and the 7626 retention of the resulting proceeds by the University.

VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND 7627 7628 PROCEDURES.

7629 The President, acting through the Executive Vice President and Chief Operating Officer or his 7630 designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures 7631 for the Academic Division and the College, which, in addition to the Rules, implement applicable 7632 provisions of law and this Policy. University procurements shall be carried out in accordance with this 7633 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 7634 7635 Board to appropriate University officials who shall oversee University procurements of goods, services, 7636 insurance, and construction, including a grant of authority to such officials to engage in further 7637 delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the 7638 competitive principles set forth in Part V above.

7639 Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall 7640 become effective on the Effective Date of the University's initial Management Agreement with the 7641 Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the 7642 University on behalf of the University for goods, services, insurance, and construction. This Policy, the 7643 Rules, and any implementing policies and procedures adopted by the University shall not affect existing 7644 contracts already in effect.

7645 The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of 7646 7647 7648 Higher Education and their Vendors in their form as of the effective date of this Policy and as amended 7649 or changed in the future, and with University procedures specific to the Acquisition of Goods and 7650 Services. The Rules and University implementing policies and procedures shall implement a system of 7651 competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including 7652 professional services as defined in the Rules, insurance, and construction.

7653 VIII. REOUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES. 7654

A. Protests, Appeals and Debarment.

7655 The Rules and University implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor 7656 7657 7658 non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are 7659 filed within the times specified by the Rules. Remedies available shall be limited to reversal of the 7660 action challenged or, where a contract already being performed is declared void, compensation for the 7661 cost of performance up to the time of such declaration. The Rules and University implementing policies 7662 and procedures also may establish the basis and process for debarment of any vendor, firm or 7663 contractor. 7664

B. Prompt Payment of Contractors and Subcontractors.

7665 The Rules and University implementing policies and procedures shall include provisions related to 7666 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 7667 7668 lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The 7669 payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or 7670 the date established by the contract. All contracts also shall require prompt payment of subcontractors 7671 by the general contractor, upon receipt of payment by the University. 7672

C. Types of Procurements.

7673 The Rules and University implementing policies and procedures shall implement a system of 7674 competitive negotiation for professional services, as defined in the Rules, and shall implement 7675 purchasing procedures developed to maximize competition given the size and duration of the contract, 7676 and the needs of the University. Such policies and procedures may include special provisions for 7677 procurements such as emergency procurements, sole source procurements, brand name procurements, 7678 small purchases, procurements in which only one qualified vendor responds, and others.

7679 D. Approval and Public Notice of Procurements.

7680 The Rules and University implementing policies and procedures shall provide for approval of

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7681	solicitation documents by an authorized individual and for reasonable public notice of procurements,
7682	given the size and nature of the need and the applicability of any Virginia Freedom of Information Act
7683	exemption.
7684	E. Administration of Contracts.
7685	The Rules and University implementing policies and procedures shall contain provisions related to
7686	the administration of contracts, including contract claims, modifications, extensions and assignments.
7687	F. Non-Discrimination.
7688	The Rules and University implementing policies and procedures shall provide for a
7689	non-discriminatory procurement process that prohibits discrimination because of race, religion, color,
7690	sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall
7691	include appropriate provisions to effectuate fair and reasonable consideration of women-owned,
7692	minority-owned and small businesses and to promote and encourage a diversity of suppliers.
7693	
7694	ATTACHMENT I
7695	
7696	Rules Governing Procurement of Goods, Services, Insurance, and Construction
7697	by a Public Institution of Higher Education of the Commonwealth of Virginia
7698	Governed by Subchapter 3 of the
7699	Restructured Higher Education Financial and Administrative Operations Act,
7700	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia
7701	In accordance with the provisions of the Restructured Higher Education Financial and
7702	Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of
7703	Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher
7704	education of the Commonwealth of Virginia that has entered into a Management Agreement with the
7705	Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing
7706	Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods,
7707	services, insurance, and construction by the Institution, excluding the University of Virginia Medical
7708	Center:
7709	§ 1. Purpose The purpose of these Rules is to enunciate the public policies pertaining to
7710	procurement of good, services, insurance, and construction by the Institution from nongovernmental
7711	sources, to include governmental procurement that may or may not result in monetary consideration for
7712	either party. These Rules shall apply whether the consideration is monetary or nonmonetary and
7713 7714	regardless of whether the Institution, the contractor, or some third party is providing the consideration.
7715	§ 2. Scope of Procurement Authority Subject to these Rules, and the Institution's continued
7716	substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth purpose to $S_{22} = 28 \frac{89}{D} (D)(4)$ and the requirements of Chapter 410 of the Ast the
7717	Commonwealth pursuant to § $23-38.88(D)(4)$ and the requirements of Chapter 4.10 of the Act, the
7718	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
7719	outlay-related procurement and information technology-related procurement, that Institutions are
7720	
7721	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
7722	s. Competition is the Friendly, - 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
7723	manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have
7724	access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the
7725	intent of the governing body of the Institution that competition be sought to the maximum feasible
7726	degree, that procurement procedures involve openness and administrative efficiency, that individual
1140	degree, that procedences involve openness and daministrative efficiency, that individual

public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing 7727 7728 contract awards be made clear in advance of the competition, that specifications reflect the procurement 7729 needs of the purchasing body rather than being drawn to favor a particular vendor, and that the 7730 purchaser and vendor freely exchange information concerning what is sought to be procured and what 7731 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 7732 7733 qualification-based selection process. The criteria, factors, and basis for consideration of best value and 7734 the process for the consideration of best value shall be as stated in the procurement solicitation.

7735 § 4. Definitions. - As used in these Rules:

7736 "Affiliate" means an individual or business that controls, is controlled by, or is under common
7737 control with another individual or business. A person controls an entity if the person owns, directly or
7738 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition
7739 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
7740 members of the board of directors or similar governing body of the business or (ii) is convertible into,
7741 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A

7742 general partnership interest shall be deemed to be a voting security.

7743 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 7744 and various elements of required services that in total are optimal relative to the Institution's needs.

7745 "Business" means any type of corporation, partnership, limited liability company, association, or sole 7746 proprietorship operated for profit. 7747

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

7748 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 7749 procured, specifying the factors that will be used in evaluating the proposal and containing or 7750 incorporating by reference the other applicable contractual terms and conditions, including any unique 7751 capabilities or qualifications that will be required of the contractor.

7752 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 7753 proposals by publication in a newspaper or newspapers of general circulation in the area in which the 7754 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 7755 can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website 7756 7757 and may be published on other appropriate websites. In addition, proposals may be solicited directly 7758 from potential contractors.

7759 3. a. Procurement of professional services. The procurement of professional services for capital 7760 projects shall be conducted using a qualification-based selection process. The Institution shall engage 7761 in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on 7762 the basis of initial responses and with emphasis on professional competence, to provide the required 7763 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 7764 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed 7765 project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may 7766 7767 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 7768 7769 7770 in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all 7771 information developed in the selection process to this point, the Institution shall select in the order of 7772 preference two or more offerors whose professional qualifications and proposed services are deemed 7773 most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a 7774 contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair 7775 and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror 7776 ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and 7777 so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror 7778 7779 is clearly more highly qualified and suitable than the others under consideration, a contract may be 7780 negotiated and awarded to that offeror.

7781 A contract for architectural or professional engineering services relating to construction projects may 7782 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience 7783 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 7784 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 7785 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the 7786 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 7787 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 7788 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 7789 Request for Proposal stated the potential for a multi-vendor award.

Multiphase professional services contracts satisfactory and advantageous to the Institution for 7790 7791 environmental, location, design and inspection work regarding construction of infrastructure projects 7792 may be negotiated and awarded based on qualifications at a fair and reasonable price for the first 7793 phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such 7794 7795 contract, the Institution shall state the anticipated intended total scope of the project and determine in 7796 writing that the nature of the work is such that the best interests of such Institution require awarding 7797 the contract.

7798 b. Procurement of other than professional services. Selection shall be made of two or more offerors 7799 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 7800 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 7801 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror 7802

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so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 7803 7804 shall award the contract to that offeror. When the terms and conditions of multiple awards are so 7805 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 7806 Institution determine in writing and in its sole discretion that only one offeror has made the best 7807 proposal, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional 7808 7809 services, which includes the following elements:

7810 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 7811 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided 7812 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 7813 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 7814 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 7815 7816 qualified under the criteria set forth in the first solicitation.

7817 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 7818 publication on the Department of General Services' central electronic procurement website. Public 7819 notice also may be published in a newspaper of general circulation or on other appropriate websites, or 7820 both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations 7821 shall include businesses selected from a list made available by the Department of Minority Business 7822 Enterprise. 7823

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 7824 7825 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 7826 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, 7827 which are helpful in determining acceptability.

7828 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of 7829 multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

7830 "Construction" means building, altering, repairing, improving or demolishing any structure, building 7831 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

7832 "Construction management contract" means a contract in which a party is retained by the owner to 7833 coordinate and administer contracts for construction services for the benefit of the owner, and may also 7834 include, if provided in the contract, the furnishing of construction services to the owner.

7835 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 7836 agreement with the Commonwealth of Virginia, a public institution of higher education of the 7837 Commonwealth that has entered into a management agreement with the Commonwealth to be governed 7838 by the provisions of Subchapter 3 of the Restructuring Act.

7839 "Design-build contract" means a contract between the Institution and another party in which the 7840 party contracting with the Institution agrees to both design and build the structure, roadway or other 7841 item specified in the contract.

7842 "Goods" means all material, equipment, supplies, and printing, including information technology and 7843 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 7844 7845 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or 7846 delivery schedule for the goods, services or construction being procured.

7847 "Multiphase professional services contract" means a contract for the providing of professional 7848 services where the total scope of work of the second or subsequent phase of the contract cannot be 7849 specified without the results of the first or prior phase of the contract.

7850 "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 7851 7852 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall 7853 still apply to professional services for such small construction projects.

7854 "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 7855 7856 sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured 7857 under the contract, and who at such time is eligible and qualified in all respects to perform that 7858 contract, and who would have been eligible and qualified to submit a bid or proposal had the contract 7859 been procured through competitive sealed bidding or competitive negotiation.

7860 "Professional services" means work performed by an independent contractor within the scope of the 7861 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 7862 dentistry, medicine, optometry, pharmacy or professional engineering.

7863 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,

7864 post, commission, committee, institution, board or political subdivision created by law to exercise some 7865 sovereign power or to perform some governmental duty, and empowered by law to undertake the 7866 activities described in these Rules.

7867 "Public contract" means an agreement between the Institution and a nongovernmental source that is 7868 enforceable in a court of law.

7869 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform 7870 fully the contract requirements and the moral and business integrity and reliability that will assure good 7871 faith performance, and who has been prequalified, if required.

7872 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects 7873 to the Invitation to Bid.

"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative 7874 7875 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 7876 7877 adopted by the governing body of the Covered Institution.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified 7878 7879 goods or nonprofessional services through real-time electronic bidding, with the award being made to 7880 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 7881 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 7882 established for bid opening.

7883 "Services" means any work performed by an independent contractor wherein the service rendered 7884 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials 7885 and supplies.

7886 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working 7887 environment and individual goals that utilizes work experience and related services for assisting the 7888 handicapped person to progress toward normal living and a productive vocational status. 7889

§ 5. Methods of procurement. -

7890 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 7891 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, 7892 or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation. Qualification-based selection 7893 7894 shall be used for design services. 7895

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

7896 Construction may be procured only by competitive sealed bidding, except that competitive D. 7897 negotiation may be used in the following instances upon a determination made in advance by the 7898 Institution and set forth in writing that competitive sealed bidding is either not practicable or not 7899 fiscally advantageous to the public, which writing shall document the basis for this determination:

7900 1. By the Institution on a fixed price design-build basis or construction management basis under 7901 § 7; 7902

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

7903 By the Institution for the construction of highways and any draining, dredging, excavation, 3. 7904 grading or similar work upon real property; or

7905 Upon a determination in writing that there is only one source practically available for that Е. 7906 which is to be procured, a contract may be negotiated and awarded to that source without competitive 7907 sealed bidding or competitive negotiation. The writing shall document the basis for this determination. 7908 The Institution shall issue a written notice stating that only one source was determined to be practicably 7909 available, and identifying that which is being procured, the contractor selected, and the date on which 7910 the contract was or will be awarded. This notice shall be posted in a designated public area, which may 7911 be the Department of General Services' website for the Commonwealth's central electronic procurement 7912 system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be 7913 7914 published on the Department of General Services' website for the Commonwealth's central electronic 7915 procurement system and may be published on other appropriate websites.

7916 In case of emergency, a contract may be awarded without competitive sealed bidding or F. 7917 competitive negotiation; however, such procurement shall be made with such competition as is 7918 practicable under the circumstances. A written determination of the basis for the emergency and for the 7919 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 7920 written notice stating that the contract is being awarded on an emergency basis, and identifying that 7921 which is being procured, the contractor selected, and the date on which the contract was or will be 7922 awarded. This notice shall be posted in a designated public area, which may be the Department of 7923 General Services' website for the Commonwealth's central electronic procurement system, or published 7924 in a newspaper of general circulation on the day the Institution awards or announces its decision to

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7925 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may 7926 also be published on the Department of General Services' website for the Commonwealth's central 7927 electronic procurement system and other appropriate websites.

7928 The Institution may establish purchase procedures, if adopted in writing, not requiring G. 7929 competitive sealed bids or competitive negotiation for single or term contracts for goods and services 7930 other than professional services if the aggregate or the sum of all phases is not expected to exceed 7931 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

7932 The Institution may establish purchase procedures, if adopted in writing, not requiring Η. 7933 competitive negotiation for single or term contracts for professional services if the aggregate or the sum 7934 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide 7935 for competition wherever practicable.

7936 I. Upon a determination made in advance by the Institution and set forth in writing that the 7937 purchase of goods, products or commodities from a public auction sale is in the best interests of the 7938 public, such items may be purchased at the auction, including online public auctions. The writing shall 7939 document the basis for this determination.

J. The purchase of goods or nonprofessional services, but not construction or professional services, 7940 7941 may be made by reverse auctioning.

7942 § 6. Cooperative procurement. -

7943 In circumstances where the Institution determines and documents that statewide contracts for Α. 7944 goods and services, including information technology and telecommunications goods and services, do 7945 not provide goods and services to the Institution that meet its business goals and objectives, the 7946 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement 7947 arrangement on behalf of or in conjunction with public bodies, public or private health or educational 7948 institutions, other public or private organizations or entities, including public-private partnerships, 7949 charitable organizations, health care provider alliances or purchasing organizations or entities, or with 7950 public agencies or institutions or group purchasing organizations of the several states, territories of the 7951 United States, or the District of Columbia, for the purpose of combining requirements to effect cost 7952 savings or reduce administrative expense in any acquisition of goods and services, other than 7953 professional services. The Institution may purchase from any authority, department, agency, institution, 7954 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not 7955 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to 7956 bid specified that the procurement was being conducted on behalf of other public bodies. In such 7957 instances, deviation from the procurement procedures set forth in these Rules and the administrative 7958 policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of 7959 the above, use of cooperative contracts shall conform to the business requirements of the 7960 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 7961 7962 that will allow for participation in any such arrangement.

7963 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 7964 Institution's business goals and objectives, and as authorized by the United States Congress and 7965 7966 consistent with applicable federal regulations, and provided the terms of the contract permit such 7967 purchases:

7968 1. The Institution may purchase goods and nonprofessional services, from a United States General 7969 Services Administration contract or a contract awarded by any other agency of the United States 7970 government; and

7971 The Institution may purchase telecommunications and information technology goods and 2. 7972 nonprofessional services from a United States General Services Administration contract or a contract 7973 awarded by any other agency of the United States government. 7974

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

7975 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed 7976 price design-build basis or construction management basis in accordance with the provisions of this 7977 section.

7978 B. Procurement of construction by the design-build or construction management method shall be a 7979 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 7980 qualifications. Based upon the information submitted and any other relevant information which the 7981 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 7982 selected by the Commonwealth and requested to submit proposals.

7983 § 8. Modification of the contract. -

7984 A. A contract awarded by the Institution may include provisions for modification of the contract 7985 during performance, but no fixed-price contract may be increased by more than 25% of the amount of

7986 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's 7987 president or his designee. In no event may the amount of any contract, without adequate consideration, 7988 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 7989 an error in its bid or offer.

7990 B. The Institution may extend the term of an existing contract for services to allow completion of 7991 any work undertaken but not completed during the original term of the contract.

7992 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 7993 modifications. 7994

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

7995 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 7996 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 7997 7998 Institution shall include businesses selected from a list made available by the Department of Minority 7999 Business Enterprise.

8000 B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The 8001 8002 programs established shall be in writing and shall include cooperation with the Department of Minority 8003 Business Enterprise, the United States Small Business Administration, and other public or private 8004 agencies. The Institution shall submit annual progress reports on minority business procurement to the 8005 Department of Minority Business Enterprise.

8006 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 8007 analysis that documents a statistically significant disparity between the availability and utilization of 8008 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 8009 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 8010 law.

8011 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 8012 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 8013 that employing ex-offenders on the specific contract is not in its best interest.

§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The 8014 8015 Institution shall include in every contract of more than \$10,000 the following provisions: 8016

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

8017 a. The contractor will not discriminate against any employee or applicant for employment because 8018 of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law 8019 relating to discrimination in employment, except where there is a bona fide occupational qualification 8020 reasonably necessary to the normal operation of the contractor. The contractor agrees to post in 8021 conspicuous places, available to employees and applicants for employment, notices setting forth the 8022 provisions of this nondiscrimination clause.

8023 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 8024 contractor, will state that such contractor is an equal opportunity employer.

8025 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 8026 shall be deemed sufficient for the purpose of meeting the requirements of this section.

8027 The contractor will include the provisions of the foregoing paragraphs a, b and c in every 2. 8028 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 8029 subcontractor or vendor.

8030 Drug-free workplace to be maintained by contractor; required contract provisions. - The § 11. 8031 Institution shall include in every contract over \$10,000 the following provisions:

8032 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace 8033 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 8034 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 8035 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 8036 workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 8037 8038 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the 8039 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 8040 binding upon each subcontractor or vendor.

8041 For the purposes of this section, "drug-free workplace" means a site for the "performance of work 8042 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 8043 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 8044 dispensation, possession or use of any controlled substance or marijuana during the performance of the 8045 contract.

8046 § 12. Use of brand names. - Unless otherwise provided in the Invitation to Bid, the name of a

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8047 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.

8052 § 13. Comments concerning specifications. - The Institution shall establish procedures whereby
8053 comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal
8054 can be received and considered prior to the time set for receipt of bids or proposals or award of the
8055 contract.

8056 § 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.

8061 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
8063 shall be consistent with the provisions of this section.

8064 The application form used in such process shall set forth the criteria upon which the qualifications
8065 of prospective contractors will be evaluated. The application form shall request of prospective
8066 contractors only such information as is appropriate for an objective evaluation of all prospective
8067 contractors pursuant to such criteria. The form shall allow the prospective contractor seeking
8068 prequalification to request, by checking the appropriate box, that all information voluntarily submitted
8069 by the contractor pursuant to this subsection shall be considered a trade secret or proprietary
8070 information subject to the provisions of subsection D of § 34 of these Rules.

8071 In all instances in which the Institution requires prequalification of potential contractors for
8072 construction projects, advance notice shall be given of the deadline for the submission of
8073 prequalification applications. The deadline for submission shall be sufficiently in advance of the date
8074 set for the submission of bids for such construction so as to allow the procedures set forth in this
8075 subsection to be accomplished.

8076 At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

8081 A decision by the Institution denying prequalification under the provisions of this subsection shall be **8082** final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

8083 *C.* The Institution may deny prequalification to any contractor only if the Institution finds one of the **8084** following:

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1. The contractor does not have sufficient financial ability to perform the contract that would result
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8087 from such procurement. If a bond is required to ensure performance of a contract, evidence that the
8087 contractor can acquire a surety bond from a corporation included on the United States Treasury list of
8088 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to
8089 establish the financial ability of the contractor to perform the contract resulting from such procurement;

8090 2. The contractor does not have appropriate experience to perform the construction project in **8091** question;

8092 3. The contractor or any officer, director or owner thereof has had judgments entered against him
8093 within the past 10 years for the breach of contracts for governmental or nongovernmental construction,
8094 including, but not limited to, design-build or construction management;

8095 4. The contractor has been in substantial noncompliance with the terms and conditions of prior 8096 construction contracts with the Institution without good cause. If the Institution has not contracted with 8097 a contractor in any prior construction contracts, the Institution may deny pregualification if the 8098 contractor has been in substantial noncompliance with the terms and conditions of comparable 8099 construction contracts with another public body without good cause. The Institution may not utilize this 8100 provision to deny prequalification unless the facts underlying such substantial noncompliance were 8101 documented in writing in the prior construction project file and such information relating thereto given 8102 to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief
financial official thereof has been convicted within the past 10 years of a crime related to governmental
or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6
(§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental
Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any

8108 substantially similar law of the United States or another state;

8109 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an 8110 established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and 8111

8112 7. The contractor failed to provide to the Institution in a timely manner any information requested 8113 by the Institution relevant to subdivisions 1 through 6 of this subsection.

8114 § 15. Negotiation with lowest responsible bidder. - Unless canceled or rejected, a responsive bid 8115 from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest 8116 responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to 8117 obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the 8118 8119 Invitation to Bid and summarized therein. 8120

§ 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 8121 8122 8123 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 8124 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 8125 particular responsive and responsible bidder or offeror. 8126

B. The Institution may waive informalities in bids.

8127 § 17. Exclusion of insurance bids prohibited. - Notwithstanding any other provision of law, no 8128 insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus 8129 lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to 8130 the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18. 8131

8132 § 18. Debarment. - Prospective contractors may be debarred from contracting for particular types of 8133 supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment 8134 8135 on the basis of a contractor's unsatisfactory performance for the Institution. 8136

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

8137 A. The Institution may implement a purchase program for recycled goods and may coordinate its 8138 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 8139 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

8140 The Department of Environmental Quality, with advice from the Virginia Recycling Markets В. 8141 Development Council, shall advise the Institution concerning the designation of recycled goods. 8142

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

8143 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 8144 8145 decided by lot.

8146 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 8147 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 8148 lowest responsive and responsible bidder who is a resident of Virginia.

8149 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where 8150 goods are being offered, and existing price preferences have already been taken into account, preference 8151 shall be given to the bidder whose goods contain the greatest amount of recycled content.

8152 § 21. Preference for Virginia coal used in the Institution. - In determining the award of any contract 8153 for coal to be purchased for use in the Institution with state funds, the Institution shall procure using 8154 competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the 8155 8156 low responsive and responsible bidder offering coal mined elsewhere. 8157

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

8158 A. In determining the award of any contract for paper and paper products to be purchased for use 8159 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low 8160 8161 responsive and responsible bidder or offerior offering a product that does not qualify under subsection 8162 В.

For purposes of this section, recycled paper and paper products means any paper or paper 8163 *B*. 8164 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247. 8165 § 23. Withdrawal of bid due to error. -

8166 A bidder for a public construction contract, other than a contract for construction or Α. 8167 maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was 8168

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8169 submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and 8170 was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of 8171 work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error 8172 or unintentional omission can be clearly shown by objective evidence drawn from inspection of original 8173 work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

8174 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from 8175 consideration if the price bid would have been substantially lower than the other bids due solely to the 8176 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 8177 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 8178 objective evidence drawn from inspection of original work papers, documents and materials used in the 8179 preparation of the bid sought to be withdrawn.

8180 One of the following procedures for withdrawal of a bid shall be selected by the Institution and 8181 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 8182 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 8183 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or 8184 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 8185 8186 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 8187 instance, the work papers, documents and materials may be considered as trade secrets or proprietary 8188 information subject to the conditions of subsection F of \S 34 of these Rules. The bids shall be opened 8189 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 8190 shall have two hours after the opening of bids within which to claim in writing any mistake as defined 8191 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 8192 period has elapsed. The mistake shall be proved only from the original work papers, documents and 8193 materials delivered as required herein.

8194 B. The Institution may establish procedures for the withdrawal of bids for other than construction 8195 contracts.

8196 C. No bid shall be withdrawn under this section when the result would be the awarding of the 8197 contract on another bid of the same bidder or of another bidder in which the ownership of the 8198 withdrawing bidder is more than 5%.

8199 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed 8200 to be the low bid.

8201 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or 8202 labor to or perform any subcontract or other work agreement for the person or firm to whom the 8203 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for 8204 which the withdrawn bid was submitted.

8205 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 8206 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. 8207 8208

§ 24. Contract Pricing Arrangements. -

8209 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 8210 basis that is not prohibited by these Rules.

8211 B. Except in case of emergency affecting the public health, safety or welfare, no public contract 8212 shall be awarded on the basis of cost plus a percentage of cost.

8213 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis 8214 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in 8215 whole or part as a percentage of such claims, shall not be prohibited by this section. 8216

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

8217 A. No contractor shall perform any work on a construction project of the Institution unless he (i) 8218 has obtained, and continues to maintain for the duration of the work, workers' compensation coverage 8219 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 8220 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 8221 evidence of such coverage.

8222 B. The Department of General Services shall provide the form to the Institution. Failure of the 8223 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 8224 of subsection A.

8225 C. No subcontractor shall perform any work on a construction project of the Institution unless he 8226 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage 8227 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 8228 Virginia.

8229 § 26. Retainage on construction contracts. -

8230 A. In any contract issued by the Institution for construction that provides for progress payments in 8231 installments based upon an estimated percentage of completion, the contractor shall be paid at least 8232 95% of the earned sum when payment is due, with no more than 5% being retained to ensure faithful 8233 performance of the contract. All amounts withheld may be included in the final payment.

8234 B. Any subcontract for a public project that provides for similar progress payments shall be subject 8235 to the provisions of this section.

8236 § 27. Public construction contract provisions barring damages for unreasonable delays declared 8237 void. -

8238 A. Any provision contained in any public construction contract of the Institution that purports to 8239 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable 8240 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the 8241 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to 8242 causes within their control shall be void and unenforceable as against public policy.

8243 Subsection A shall not be construed to render void any provision of a public construction *B*. 8244 contract awarded by the Institution that:

8245 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the 8246 contractor, or its subcontractors, agents or employees; 8247

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

3. Provides for liquidated damages for delay; or

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

8250 C. A contractor making a claim against the Institution for costs or damages due to the alleged 8251 delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the 8252 8253 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage 8254 shall be equal to the percentage of the contractor's total delay claim that is determined through 8255 litigation or arbitration to be false or to have no basis in law or in fact.

8256 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 8257 the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to 8258 8259 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 8260 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 8261 determined through litigation or arbitration to have been made in bad faith. 8262

§ 28. Bid bonds. -

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8263 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 8264 million shall be accompanied by a bid bond from a surety company selected by the bidder that is 8265 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he 8266 will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not 8267 exceed 5% of the amount bid.

8268 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for 8269 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

8270 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 8271 or proposals for construction contracts anticipated to be less than \$1 million. 8272

§ 29. Performance and payment bonds. -

8273 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million 8274 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to 8275 any prime contractor requiring the performance of labor or the furnishing of materials for buildings, 8276 structures or other improvements to real property owned by the Institution, the contractor shall furnish 8277 to the Institution the following bonds:

8278 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 8279 conditioned upon the faithful performance of the contract in strict conformity with the plans, 8280 specifications and conditions of the contract. For transportation-related projects, such bond shall be in 8281 a form and amount satisfactory to the Institution.

8282 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of 8283 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom 8284 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the 8285 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor 8286 supplied or performed in the furtherance of the work.

8287 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but 8288 only for periods when the equipment rented is actually used at the site.

8289 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 8290 that are authorized to do business in Virginia.

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8291 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

8292 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

8293 Nothing in this section shall preclude the Institution from requiring payment or performance Е. 8294 bonds for construction contracts below \$1 million.

8295 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish 8296 a payment bond with surety thereon in the sum of the full amount of the contract with such 8297 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are 8298 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the 8299 work provided for in the subcontract.

8300 § 30. Alternative forms of security. -

8301 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 8302 escrow in the face amount required for the bond.

8303 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 8304 8305 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 8306 be granted only upon a determination that the alternative form of security proffered affords protection 8307 to the Institution equivalent to a corporate surety's bond.

8308 § 31. Bonds on other than construction contracts. - The Institution may require bid, payment, or 8309 performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for 8310 Proposal.

8311 § 32. Action on performance bond. - No action against the surety on a performance bond shall be 8312 brought by the Institution unless brought within one year after (i) completion of the contract, including 8313 the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty 8314 that gave rise to the action.

8315 § 33. Actions on payment bonds; waiver of right to sue. -

A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 8316 8317 material in accordance with the contract documents in furtherance of the work provided in any contract 8318 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 8319 days after the day on which the claimant performed the last of the labor or furnished the last of the 8320 materials for which he claims payment, may bring an action on the payment bond to recover any 8321 amount due him for the labor or material. The obligee named in the bond need not be named a party 8322 to the action.

8323 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 8324 contractual relationship, express or implied, with the contractor, may bring an action on the 8325 contractor's payment bond only if he has given written notice to the contractor within 180 days from the 8326 day on which the claimant performed the last of the labor or furnished the last of the materials for 8327 which he claims payment, stating with substantial accuracy the amount claimed and the name of the 8328 person for whom the work was performed or to whom the material was furnished. Notice to the 8329 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to 8330 such contractor at any place where his office is regularly maintained for the transaction of business.

8331 Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not 8332 be subject to the time limitations stated in this subsection.

8333 C. Any action on a payment bond shall be brought within one year after the day on which the 8334 person bringing such action last performed labor or last furnished or supplied materials.

8335 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 8336 it is in writing, signed by the person whose right is waived, and executed after such person has 8337 performed labor or furnished material in accordance with the contract documents. 8338

§ 34. Public inspection of certain records. -

8339 A. Except as provided in this section, all proceedings, records, contracts and other public records 8340 relating to procurement transactions shall be open to the inspection of any citizen, or any interested 8341 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et 8342 seq.).

8343 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 8344 shall not be open to public inspection.

8345 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 8346 bid records within a reasonable time after the opening of all bids but prior to award, except in the 8347 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, 8348 bid records shall be open to public inspection only after award of the contract.

8349 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect 8350 proposal records within a reasonable time after the evaluation and negotiations of proposals are 8351 completed but prior to award, except in the event that the Institution decides not to accept any of the

8352 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection 8353 only after award of the contract.

8354 Any inspection of procurement transaction records under this section shall be subject to Е. 8355 reasonable restrictions to ensure the security and integrity of the records.

8356 Trade secrets or proprietary information submitted by a bidder, offeror or contractor in F. 8357 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 8358 8359 seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to 8360 or upon submission of the data or other materials, (ii) identify the data or other materials to be 8361 protected, and (iii) state the reasons why protection is necessary. 8362

§ 35. Exemption for certain transactions. -

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

8364 1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be 8365 8366 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1. 8367

8368 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the 8369 Institution. However, such purchase procedures shall provide for competition where practicable.

8370 Procurement of any construction or planning and design services for construction by the 3. 8371 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is 8372 obligated to conform to procurement procedures that are established by federal statutes or regulations, 8373 whether or not those federal procedures are in conformance with the provisions of these Rules. 8374

4. The University of Virginia Medical Center.

8375 The purchase of goods and services by the Institution when such purchases are made under a 5. remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules. 8376

8377 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 8378 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 8379 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 8380 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 8381 of the Institution's President or his designee that acceptance of the grant or contract funds under the 8382 applicable conditions is in the public interest. Such determination shall state the specific provision of 8383 these Rules in conflict with the conditions of the grant or contract. 8384

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

8385 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into 8386 contracts with faith-based organizations for the purposes described in this section on the same basis as 8387 any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section. 8388

B. For the purposes of this section, "faith-based organization" means a religious organization that is 8389 8390 or applies to be a contractor to provide goods or services for programs funded by the block grant 8391 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 8392 104-193.

8393 С. The Institution, in procuring goods or services, or in making disbursements pursuant to this 8394 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 8395 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 8396 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of 8397 religious freedom by the recipients of such goods, services, or disbursements.

8398 The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and D. 8399 purchase orders prominently display a nondiscrimination statement indicating that it does not 8400 discriminate against faith-based organizations.

8401 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any 8402 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on 8403 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 8404 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as 8405 other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the 8406 8407 accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in 8408 clause (ii) shall be construed to supercede or otherwise override any other applicable state law.

8409 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8410 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent 8411 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains. 8412

8413 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization 8414 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based 8415 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of 8416 a particular religion.

8417 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 8418 to a contract between the Institution and a faith-based organization, objects to the religious character of 8419 the faith-based organization from which the individual receives or would receive the goods, services, or 8420 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 8421 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

8422 The Institution shall provide to each individual who applies for or receives goods, services, or 8423 disbursements provided pursuant to a contract between the Institution and a faith-based organization a 8424 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based 8425 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 8426 charitable or religious character, practices, or expression. No provider of services may discriminate 8427 against you on the basis of religion, a religious belief, or your refusal to actively participate in a 8428 religious practice. If you object to a particular provider because of its religious character, you may 8429 request assignment to a different provider. If you believe that your rights have been violated, please 8430 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

8431 § 37. Exemptions from competition for certain transactions. -

8432 The Institution may enter into contracts without competition, as that term is described in subsections 8433 A through J of § 5 (Methods of procurement) of these Rules, for:

8434 1. The purchase of goods or services that are produced or performed by or related to:

8435 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 8436 Blind and Vision Impaired;

8437 *b*. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or 8438 supported employment services serving the handicapped;

- c. Private educational institutions; or 8439
- 8440 d. Other public educational institutions. 8441
 - 2. Speakers and performing artists;

3. Memberships and Association dues;

- 8443 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 8444 goods or services by the Institution;
- 8445 5. Group travel in foreign countries:
- 8446 6. Conference facilities and services;

8447 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, 8448 registration and tournament fees:

8449 8. Royalties; or

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8450 9. The purchase of legal services, provided that the Office of the Attorney General has been 8451 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

8452 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain 8453 transactions; limitations. - The Institution may enter into contracts for insurance or electric utility 8454 service without competitive sealed bidding or competitive negotiation if purchased through an 8455 association of which the Institution is a member if the association was formed and is maintained for the 8456 purpose of promoting the interest and welfare of and developing close relationships with similar public 8457 bodies, provided such association has procured the insurance or electric utility services by use of 8458 competitive principles and provided that the Institution has made a determination in advance after 8459 reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive 8460 negotiation are not fiscally advantageous to the public. The writing shall document the basis for this 8461 determination.

8462 § 39. Definitions. - As used in §§ 39 through 46, unless the context requires a different meaning:

8463 "Contractor" means the entity that has a direct contract with the Institution.

8464 "Debtor" means any individual, business, or group having a delinquent debt or account with any 8465 state agency that obligation has not been satisfied or set aside by court order or discharged in 8466 bankruptcy.

8467 "Payment date" means either (i) the date on which payment is due under the terms of a contract for 8468 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days 8469 after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods 8470 or services by the Institution.

8471 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor 8472 to whom the contract was awarded or to any subcontractor in the performance of the work provided for 8473 in such contract.

8474 Exemptions. - The provisions of §§ 39 through 46 shall not apply to the late payment § 40. 8475 provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

Retainage to remain valid. - Notwithstanding the provisions of §§ 39 through 46, the 8476 § 41. 8477 provisions of § 26 relating to retainage shall remain valid.

8478 § 42. Prompt payment of bills by the Institution. -

8479 A. The Institution shall promptly pay for the completely delivered goods or services by the required 8480 payment date.

8481 Payment shall be deemed to have been made when offset proceedings have been instituted, as 8482 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

8483 Separate payment dates may be specified for contracts under which goods or services are *B*. 8484 provided in a series of partial deliveries or executions to the extent that such contract provides for 8485 separate payment for such partial delivery or execution.

8486 § 43. Defect or impropriety in the invoice or goods and/or services received. - In instances where 8487 there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall 8488 notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by 8489 the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or 8490 services.

8491 § 44. Date of postmark deemed to be date payment is made. - In those cases where payment is made 8492 by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these 8493 Rules.

8494 § 45. Payment clauses to be included in contracts. - Any contract awarded by the Institution shall 8495 include:

8496 1. A payment clause that obligates the contractor to take one of the two following actions within 8497 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the 8498 subcontractor under that contract:

8499 Pay the subcontractor for the proportionate share of the total payment received from the a. 8500 Institution attributable to the work performed by the subcontractor under that contract; or

8501 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of 8502 the subcontractor's payment with the reason for nonpayment.

8503 2. A payment clause that requires (i) individual contractors to provide their social security numbers 8504 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 8505 numbers.

8506 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all 8507 amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor 8508 of payment from the Institution for work performed by the subcontractor under that contract, except for 8509 amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, 8510 8511 interest shall accrue at the rate of 1% per month."

8512 Any such contract awarded shall further require the contractor to include in each of its subcontracts 8513 a provision requiring each subcontractor to include or otherwise be subject to the same payment and 8514 interest requirements with respect to each lower-tier subcontractor.

8515 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment 8516 clause in this section shall not be construed to be an obligation of the Institution. A contract 8517 modification shall not be made for the purpose of providing reimbursement for the interest charge. A 8518 cost reimbursement claim shall not include any amount for reimbursement for the interest charge. 8519

§ 46. Interest penalty; exceptions. -

8520 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by 8521 the Institution to a vendor that remain unpaid after seven days following the payment date. However, 8522 nothing in this section shall affect any contract providing for a different rate of interest, or for the 8523 payment of interest in a different manner.

8524 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on 8525 corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of 8526 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 8527 8528 interest established pursuant to § 58.1-1812 of the Code of Virginia.

8529 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 8530 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 8531 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 8532 exception from the interest penalty provided by this subsection shall apply only to that portion of a 8533 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 8534 the disagreement.

8535 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 8536 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 8537 contractor from receiving interest on such funds under an approved escrow agreement.

8538 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 8539 8540 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the 8541 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 8542 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 8543 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven 8544 days following the payment date. 8545

§ 47. Ineligibility. -

8546 Any bidder, offeror or contractor refused permission to participate, or disqualified from Α. 8547 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 8548 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the 8549 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 8550 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 8551 requested by the bidder within five business days after receipt of the notice.

8552 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 8553 challenging the evaluation. The Institution shall issue its written determination of disqualification or 8554 ineligibility based on all information in the possession of the Institution, including any rebuttal 8555 information, within five business days of the date the Institution received such rebuttal information.

8556 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 8557 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 8558 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 8559 8560 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 8561 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 8562 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 8563 in § 54.

8564 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 8565 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 8566 restoration of eligibility.

8567 § 48. Appeal of denial of withdrawal of bid. -

8568 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final 8569 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 8570 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 8571 instituting legal action as provided in § 54.

8572 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 8573 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released 8574 8575 only upon a final determination that the bidder was entitled to withdraw the bid.

8576 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 8577 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 8578 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation 8579 to Bid, the sole relief shall be withdrawal of the bid.

8580 § 49. Determination of nonresponsibility. -

8581 Following public opening and announcement of bids received on an Invitation to Bid, the Α. 8582 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 8583 8584 low bidder is responsible. If the Institution so determines, then it may proceed with an award in 8585 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution 8586 determines that the apparent low bidder is not responsible, it shall proceed as follows:

8587 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 8588 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 8589 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that 8590 relate to the determination, if so requested by the bidder within five business days after receipt of the 8591 notice.

8592 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 8593 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 8594 business days of the date the Institution received the rebuttal information. At the same time, the 8595

8596 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

8597 3. Such notice shall state the basis for the determination, which shall be final unless the bidder 8598 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures 8599 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 8600 as provided in § 54.

8601 The provisions of this subsection shall not apply to procurements involving the prequalification of 8602 bidders and the rights of any potential bidders under such prequalification to appeal a decision that 8603 such bidders are not responsible.

8604 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the 8605 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in 8606 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the 8607 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or 8608 8609 directed award as provided in subsection A of § 54, or both.

8610 If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable 8611 8612 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. 8613

8614 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract 8615 shall proceed under this section, and may not protest the award or proposed award under the 8616 provisions of § 50 of these Rules.

8617 D. Nothing contained in this section shall be construed to require the Institution, when procuring by 8618 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 8619 to be the most advantageous. 8620

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

8621 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 8622 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 8623 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 8624 notice of the award or the announcement of the decision to award shall be given by the Institution in 8625 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 8626 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 8627 protest the award or decision to award such contract shall submit the protest in the same manner no 8628 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 8629 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part 8630 upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 8631 8632 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder 8633 8634 or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the 8635 protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or 8636 offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures 8637 8638 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 8639 as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the 8640 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of 8641 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 8642 standards of § 55 of these Rules.

8643 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then 8644 the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise 8645 it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary 8646 or capricious, then the sole relief shall be as hereinafter provided.

8647 Where the award has been made but performance has not begun, the performance of the contract 8648 may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a 8649 8650 contract is declared void, the performing contractor shall be compensated for the cost of performance 8651 up to the time of such declaration. In no event shall the performing contractor be entitled to lost 8652 profits.

8653 Where the Institution, an official designated by it, or an appeals board determines, after a С. 8654 hearing held following reasonable notice to all bidders, that there is probable cause to believe that a 8655 decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular 8656

8657 *bidder*.

8658 § 51. Effect of appeal upon contract. - Pending final determination of a protest or appeal, the
8659 validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be
8660 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.

8666 § 53. Contractual disputes. -

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

8673 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 8674 Such procedure, which may be contained in the contract or may be specifically incorporated into the 8675 contract by reference and made available to the contractor, shall establish a time limit for a final 8676 decision in writing by the Institution. If the Institution has established administrative procedures 8677 meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or 8678 specifically incorporated in the contract by reference and made available to the contractor. The 8679 Institution may require the submission of contractual claims pursuant to any contract to Alternative 8680 Dispute Resolution (ADR) as an administrative procedure.

8681 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
8682 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
8683 decision on the claim, unless the Institution fails to render such decision within the time specified in the
8684 contract.

8685 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
8686 six months of the date of the final decision on the claim by the Institution by invoking administrative
8687 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
8688 legal action as provided in § 54.

8689 § 54. Legal actions. -

8690 A bidder or offeror, actual or prospective, who is refused permission or disqualified from Α. 8691 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 8692 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging 8693 that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an 8694 honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the 8695 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, 8696 8697 8698 having been previously determined by the Institution to be not responsible in accordance with § 4, is 8699 found by the court to be a responsible bidder, the court may direct the Institution to award the contract 8700 to such bidder in accordance with the requirements of this section and the Invitation to Bid.

8701 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.

8706 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a
8707 sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award
8708 or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
8709 court challenging a proposed award or the award of a contract, which shall be reversed only if the
8710 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,
8711 but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable
8712 state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

8713 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 8714 of reasonable security to protect the Institution.

8715 E. A contractor may bring an action involving a contract dispute with the Institution in the
8716 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
8717 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of

8718 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of **8719** Accounts.

8720 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards
8721 of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or
8722 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same
8723 procurement transaction unless the Institution agrees otherwise.

8724 *G.* Nothing herein shall be construed to prevent the Institution from instituting legal action against a **8725** contractor.

8726 § 55. Administrative appeals procedure. -

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8727 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 8728 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 8729 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 8730 arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 8731 8732 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 8733 8734 of the governmental entity against whom the claim has been filed. The findings of fact shall be final 8735 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; 8736 (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 8737 8738 of these Rules. No determination on an issue of law shall be final if appropriate legal action is 8739 instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute 8740 Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

8741 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 8742 judicial review if such action is brought within 30 days of receipt of the written decision.

8743 § 56. Alternative dispute resolution. - The Institution may enter into agreements to submit disputes
8744 arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and
8745 other alternative dispute resolution procedures. However, such procedures shall be nonbinding and
8746 subject to § 2.2-514 of the Code of Virginia, as applicable.

8747 § 57. Ethics in public contracting. - The Institution and its governing body, officers and employees
8748 shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement
8749 Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.
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ATTACHMENT 2

Memorandum of Agreement

The Commonwealth of Virginia and the University of Virginia

ERP/SciQuest Implementation with eVA

8755 The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the **8756** following:

8757 I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system 8758 (Oracle).

8759 II. Initially, all non-exempt orders produced by the ERP/SciQuest integration will be transmitted to
8760 eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format.
8761 Longer term a more real-time option may be mutually agreed by the Department of General

8761 Longer term a more rear-time option may be matually agreed by the Department of General
8762 Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the
8763 ERP and eVA systems.

8764 III. The University may request that eVA contract vendors provide a version of their contract catalog
8765 for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog
8766 through eVA, then the University will access these catalogs as described in item B8 of the Metrics
8767 section of this document. In any event, the University shall be responsible for payment of all eVA
8768 transaction fees for non-exempt orders to unregistered vendors and exempt orders the University
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8770 IV. eVA will load all non-exempt University orders into the eVA Data Warehouse. For clarity, it is
8771 understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from
8772 mandatory processing through eVA.

8773 V. In lieu of processing individual orders for requirements through eVA, a more efficient
8774 administrative approach is to establish a blanket or standing order. The University is authorized to use
8775 such an approach where it makes good business sense. The University will ensure vendors understand
8776 that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the
8777 transaction fee will be based on the total order amount, and the vendor is required to pay the total
8778 transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule

8779 specified in the order.

8780 VI. eVA will deliver University non-exempt orders to vendors that are identified as accepting
8781 electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other
8782 orders to vendors. Whereas the University maintains a University specific electronic vendor record that
8783 identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA
8784 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the
8785 eVA Business Plan as follows:

8786 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.

8797 The University further agrees that:

8798 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
8799 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed
8800 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

8801 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
8802 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

8803 3. In the event the University does not provide resolution notification to the eVA Business Manager
8804 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
8805 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
8806 VII. The University will not require separate vendor registrations as a prerequisite for responding to

8806 VII. The University will not require separate vendor registrations as a prerequisite for responding to
8807 University solicitations. The University will participate in an enterprise workgroup to determine the best
8808 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9
8809 information will be supported in eVA in such a way as to provide CoVA verified vendor information to
8810 entities. The University will have the option to receive a subset of vendor related data. Until an
8811 enterprise W-9 process is established, the University will be responsible for collection of W-9
8812 information.

8813 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at
8814 least six (6) months prior to change or as soon as any new plan is proposed) with the University
8815 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that
8816 may affect the technical changes described herein.

8817 IX. Integration of the University's electronic procurement solution with the University's ERP is the
 8818 responsibility of the University. The solution must provide for orders, change orders and cancellations.
 8819 Guidelines

8820 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.

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

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

8829 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA **8830** standard format.

8831 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

8832 6. eVA Interface standard does not currently support PCard orders; however these orders may be
8833 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.
8834 Schedule

8835 The University shall implement this agreement no later than December 2006.

8836 Metrics

8837 *A. The University shall comply with the following Governor's eVA Management:*

8838 Objective

8839 Ninety-five percent of all non-exempt orders to be processed by eVA. Includes non-exempt orders

8840 issued by end users (PCard & LPO) and the central purchasing office. Non-exempt orders to 8841 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For 8842 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 8843 8844 reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

8845 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; 8846

8847 2. Conduct business with eVA registered vendors whenever possible;

8848 3. Place non-exempt orders, including change orders and cancellations, to eVA suppliers 8849 electronically using eVA;

8850 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar 8851 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 8852 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and 8853 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the 8854 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to 8855 8856 monitor the usage of confirming orders with the objective of reducing their numbers to the extent 8857 possible.

8858 The University agrees that, for confirming orders, it will resolve any vendor dispute, including 8859 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such 8860 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or 8861 CGI-AMS. 8862

The University further agrees that:

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8863 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 8864 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee); 8865

b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 8866 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and 8867

8868 c. In the event the University does not provide resolution notification to the eVA Business Manager 8869 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 8870 reversing disputed transaction fees from the vendor to the University and the University will pay the fee. 8871

6. *Timely process electronic change orders and cancellations;*

8872 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA web site except 8873 as specifically exempted by DPS;

8874 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will be responsible for the 8875 8876 accuracy of contract catalog pricing loaded into the ERP/SciQuest;

9. Use eVA electronic vendor notification for procurement opportunities (per plans to post 8877 8878 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 below); 8879

8880 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate 8881 commodities, when such are identified;

11. Complete and certify the monthly eVA Dashboard Report, and 8882

8883 12. Timely remit any eVA transaction and non-use fees incurred by the institution.

8884 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.

8885 The University shall assure that payments to CGI-AMS are current. 8886

EXHIBIT O

MANAGEMENT AGREEMENT BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE UNIVERSITY OF VIRGINIA

8894 PURSUANT TO 8895 THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT 8896

OF 2005

POLICY GOVERNING HUMAN RESOURCES FOR PARTICIPATING COVERED EMPLOYEES

8901	AND OTHER UNIVERSITY EMPLOYEE
8902	
8903	THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
8904	POLICY GOVERNING HUMAN RESOURCES FOR
8905	PARTICIPATING COVERED EMPLOYEES
8906	AND OTHER UNIVERSITY EMPLOYEES
8907	I. PREAMBLE.
8908	Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389,
8909	respectively) grant the University of Virginia authority regarding the adoption of an alternative human
8910	resources system and alternative retirement, health care and other insurance plans for University of
8911	Virginia Medical Center employees. Further, the Restructured Higher Education Financial and
8912	Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a
8913	process for the restructuring of institutions of higher education of the Commonwealth of Virginia and
8914	provides that upon becoming a Covered Institution, the University shall have responsibility and
8915	accountability for human resources management for all University employees, defined in the Act as
8916	"Covered Employees," who pursuant to subsection A of § 23-38.114 of the Act "are state employees of"
8917	the University. Specifically, the Act provides that, as of the Effective Date of its initial Management
8918	Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the
8919	Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall

8920 be subject to the policies and procedures prescribed by the Virginia Department of Human Resource 8921 Management, provided that they may subsequently elect to become Participating Covered Employees. 8922 All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 8923 (§ 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 8924 8925 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 8926 8927 procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, 8928 continue to participate in either state- or University-sponsored benefit plans as described by the 8929 Management Agreement.

8930 The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law 8931 and constitute the human resources policies to be included in any human resources system adopted by 8932 the University for its employees.

8933 This Policy is intended to cover the authority that may be granted to the University pursuant to 8934 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the 8935 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act 8936 and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers 8937 and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed 8938 those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy 8939 Statement. 8940

II. DEFINITIONS.

8941 As used in this policy, the following terms shall have the following meanings, unless the context 8942 requires otherwise:

8943 "Academic Division" means that part of the University known as (State Agency 207).

8944 "Academic Division Human Resources System" means the human resources system for Academic 8945 Division employees as provided for herein.

- 8946 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 8947 Chapter 4.10 of Title 23 of the Code of Virginia.
- 8948 Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia. "Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29 8949 8950 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by

8951 the Virginia Department of Human Resource Management and who are not Participating Covered 8952 Employees.

8953 "College" means that part of the University operated as the University of Virginia's College at Wise 8954 (State Agency 246).

8955 "College Human Resources System" means the human resources system for College employees as 8956 provided for herein.

"Covered Employee" means any person who is employed by the University on either a salaried or 8957 8958 non-salaried (wage) basis.

8959 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement 8960 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that

8961 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of

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8962 Subchapter 3 of the Act.

8963 "Employee" means Covered Employee unless the context clearly indicates otherwise.

8964 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
8965 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and
8966 missions of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the
8967 case of the University of Virginia Medical Center.

8968 "Effective Date" means the effective date of the initial Management Agreement between the **8969** University and the Commonwealth.

8970 "Existing Medical Center Policy Statement" means the Policy Statement Governing the Exercise of8971 Medical Center Personnel Autonomy adopted by the Board of Visitors in 1996.

8972 "Governing Law" means the Act and the University's Enabling Legislation.

8973 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University and the Commonwealth.

8975 "Medical Center" means that part of the University consisting of the University of Virginia Medical
8976 Center (State Agency 209), and related health care and health maintenance facilities.

8977 *"Medical Center Human Resources System" means the human resources system for Medical Center* **8978** *employees as provided for herein.*

8979 "Participating Covered Employee" means (i) all salaried nonfaculty University employees who were 8980 employed as of the day prior to the Effective Date of the University's initial Management Agreement 8981 with the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be 8982 governed by such human resources program or programs, plans, policies, and procedures established by 8983 [the Participating Institution], (ii) all salaried nonfaculty University employees who are employed by the 8984 University on or after the Effective Date of the initial Management Agreement between the University 8985 and the Commonwealth, (iii) all non-salaried nonfaculty University employees without regard to when 8986 they were hired, (iv) all faculty University employees without regard to when they were hired, and (v)8987 all employees of the University of Virginia Medical Center without regard to when they were hired.

8988 "Systems" mean collectively the Academic Division Human Resources System, the College Human
8989 Resources System, and the Medical Center Human Resources System that are in effect from time to time.
8990 "University" means the University of Virginia, consisting of the Academic Division, the College, and
8991 the Medical Center.

8992 "University employee" means a Covered Employee.

8993 III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

8994 The University has had human resources system autonomy through decentralization and codified 8995 autonomy for its employees for some time. For example, general faculty at the University are expressly 8996 exempt from the Virginia Personnel Act. The Academic Division and the College have had decentralization in most human resources functions and activities since the late 1980s and early 1990s, 8997 8998 including, but not limited to, the running of payrolls; the administration of hiring, classification, and 8999 promotion practices; the administration of separate health insurance and retirement plans. Effective 9000 July 1, 1996, all Medical Center employees were exempted from the Virginia Personnel Act and the policies and procedures of the Virginia Department of Human Resource Management (formerly the 9001 9002 Department of Personnel and Training). The Board of Visitors approved the Existing Medical Center 9003 Policy Statement in 1996. A separate human resources system is in place for all Medical Center 9004 employees, which the Board of Visitors hereby continues, recognizing that the human resources needs of 9005 the Medical Center differ in certain respects from those of the Academic Division and the College.

9006 The Act extends and reinforces the human resources autonomy previously granted to the University. 9007 This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and 9008 have in place by or after the Effective Date of its initial Management Agreement with the 9009 Commonwealth, a human resources system or systems for all University employees in the Academic 9010 Division and the College, and to continue the existing human resources system for Medical Center 9011 employees. On that Effective Date, and until changed by the University or unless otherwise specified in 9012 this Policy, the systems for University employees shall be the same systems applicable to those 9013 employees in effect immediately prior to that Effective Date.

9014 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

9015 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 9016 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 9017 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 9018 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 9019 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 9020 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 9021 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 9022 and procedures.

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9023 V. UNIVERSITY OF VIRGINIA HUMAN RESOURCES SYSTEMS.

9024 A. Adoption and Implementation of Academic Division and College Human Resources Systems for
9025 the Academic Division and the College; Continuation of Medical Center Human Resources System for
9026 the Medical Center.

9027 The President, acting through the Executive Vice President and Chief Operating Officer, in 9028 consultation with the Vice President and Provost, is hereby authorized to adopt and implement human 9029 resources systems for employees of the Academic Division and for employees of the College that 9030 implement and are consistent with the Governing Law, other applicable provisions of law, these 9031 University human resources policies for Academic Division and College employees, and any other 9032 human resources policies adopted by the Department of Human Resource Management or the Board of 9033 Visitors for University personnel, unless Academic Division employees or College employees are 9034 exempted from those other human resources policies by law or policy. The University Academic Division and College Human Resources Systems shall include a delegation of personnel authority to 9035 9036 appropriate University officials responsible for overseeing and implementing the Academic Division and 9037 College Human Resources Systems, including a grant of authority to such officials to engage in further 9038 delegation of authority as the President or his designee deems appropriate.

9039The University and the College commit to regularly engage employees in appropriate discussions and9040to receive employee input as the new Academic Division and College Human Resources Systems are9041developed. The University and the College will regularly communicate the details of new proposals to9042all employees who are eligible to participate in the new Academic Division Human Resources System or9043the College Human Resources System through written communication, open meetings, and website9044postings as appropriate, so that employees will have full information that will help them evaluate the9045merits of the new human resource system compared to the then-current State human resource system.

9046 Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and 9047 until amended as described below, the University's human resources systems shall consist of the 9048 following:

9049 1. The current human resources system for "Academic Division General Faculty" as posted on the **9050** Vice President and Provost's web site, http://www.virginia.edu/provost/index.html, and periodically **9051** amended;

9052 2. The current human resources system for "College General Faculty" as included in the University of Virginia's College at Wise Faculty Handbook 2004-05, as periodically amended;

9054 3. The current human resources system for Classified Employees in the Academic Division and the 9055 College as posted on the Virginia Department of Human Resource Management website at 9056 http://www.dhrm.state.va.us/hrpolicy/policy.html, and the University's web site at 9057 http://www.hrs.virginia.edu/policies.html, as periodically amended;

9058 4. The human resources system for Participating Covered Employees, which shall include 9059 non-salaried (wage) employees, as posted on the University Human Resources web site, 9060 www.hrs.virginia.edu, and periodically amended; and

5. The current human resources system for Medical Center employees, which shall continue, 9061 9062 including the policies and procedures set forth in the University of Virginia Medical Center Human 9063 Resources Policies and Procedures Manual, as such Manual may be amended from time to time. The 9064 Medical Center Human Resources System is and shall continue to be consistent with Governing Law, 9065 other provisions of applicable law, and any other human resources policies adopted by the Board of 9066 Visitors for Medical Center employees. All current delegations of authority to University and Medical 9067 Center officials who oversee the Medical Center Human Resources System are hereby ratified and 9068 continue.

9069 All the systems described above, except the system described in paragraph 3, may be amended by the
9070 President, acting through the Executive Vice President and Chief Operating Officer, consistent with
9071 these human resources policies. The system described in paragraph 3 may be amended only by the
9072 State.

9073 B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human 9074 Resources Policies.

9075 The President, acting through the Executive Vice President and Chief Operating Officer, shall take 9076 all necessary and reasonable steps to assure (i) that the University officials who develop, implement and 9077 administer the Academic Division and College Human Resources Systems and the Medical Center 9078 Human Resources System authorized by Governing Law and these human resources policies are 9079 knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, 9080 these University human resources policies, and other applicable Board of Visitors' human resources 9081 policies affecting University employees, and (ii) that compliance with such laws and human resources 9082 policies is achieved.

9083 VI. HUMAN RESOURCES POLICIES.

9084 The Academic Division and College Human Resources Systems adopted by the University pursuant to
9085 Governing Law and this Policy, as set forth in Section V above, as well as the Medical Center Human
9086 Resources System, shall embody the following human resources policies and principles:

9087 A. Election by Academic Division and College Salaried Nonfaculty Employees.

9088 Upon the adoption by the University of an Academic Division Human Resources System, or a 9089 College Human Resources System, or both, all salaried nonfaculty University employees who were in the 9090 employment of the Academic Division or the College, as appropriate, as of the day prior to the Effective 9091 Date of its initial Management Agreement with the Commonwealth, except employees of the Medical 9092 Center, shall be given written notice of their right to elect to participate in and be governed by either 9093 (i) the State human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 9094 et seq.) of Title 2.2 of the Code of Virginia, and administered by the Department of Human Resource 9095 Management, or (ii) the Academic Division Human Resources System or the College Human Resources 9096 System, as appropriate. A salaried nonfaculty University employee who elects to continue to be 9097 governed by the State human resources program described above shall continue to be governed by all 9098 State human resources and benefit plans, programs, policies and procedures that apply to and govern 9099 State employees. A salaried nonfaculty University employee who elects in writing to participate in and 9100 be governed by the Academic Division Human Resources System or the College Human Resources 9101 System, as appropriate, also, by that election, shall be deemed to have elected to be eligible to 9102 participate in and to be governed by the human resources, authorized alternative insurance, and 9103 severance plans, programs, policies and procedures that are or may be adopted by the University as 9104 part of that Academic Division Human Resources System or College Human Resources System, as 9105 appropriate.

9106 Each such salaried nonfaculty University employee shall be given at least 90 days to make the 9107 election required by the prior paragraph. Such 90-day period shall begin to run on the date on which the Academic Division Human Resources System or the College Human Resources System, as 9108 9109 appropriate, becomes effective for that University employee's classification of employees. If such a 9110 salaried nonfaculty University employee does not make an election by the end of that specified election 9111 period, that University employee shall be deemed not to have elected to participate in the Academic 9112 Division Human Resources System or the College Human Resources System, as appropriate. If such a 9113 salaried nonfaculty University employee elects to participate in the Academic Division Human Resources 9114 System or the College Human Resources System, as appropriate, that election shall be irrevocable. At 9115 least every two years, the University shall offer to salaried nonfaculty University employees who have 9116 elected to continue to participate in the state human resources program set forth in Chapters 28 9117 (§ 22.-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, an opportunity to 9118 elect to participate in the Academic Division Human Resources System or the College Human Resources 9119 System, as appropriate; provided that, each time prior to offering such opportunity to such salaried 9120 nonfaculty University employees, and at least once every two years after the effective date of the Academic Division Human Resources System or the College Human Resources System, or both, as 9121 9122 appropriate, the University shall make available to each of its salaried nonfaculty University employees 9123 a comparison of its human resources program for that classification of salaried nonfaculty University 9124 employee with the State human resources program for comparable State employees, including but not 9125 limited to a comparability assessment of compensation and benefits. A copy of the human resources 9126 program comparison shall be provided to the Department of Human Resource Management.

9127 B. Classification and Compensation.

9128 The Systems shall include classification and compensation plans that are fair and General. 9129 reasonable, and are based on the availability of University financial resources. The plans adopted by 9130 the University for its faculty, Medical Center employees, and other Participating Covered Employees 9131 shall be independent of, and need not be based on, the classification and compensation plans of the 9132 Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the 9133 review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall 9134 provide information on its classification and compensation plans to all University employees. The plans 9135 applicable to Participating Covered Employees and Medical Center employees may or may not include 9136 changes in classification or compensation announced by the Commonwealth depending on such factors 9137 as the availability of necessary financial resources to fund any such changes, and subject to the review 9138 and approval by the Board of Visitors of any major changes in the University's compensation plans.

9139 Classification Plan. The Systems shall include one or more classification plans for University
9140 employees that classify positions according to job responsibilities and qualifications. On the Effective
9141 Date of the University's initial Management Agreement with the Commonwealth, and until changed by
9142 the University, the classification plans shall be the same plans that are in effect for each group of
9143 employees immediately prior to that Effective Date.

9144 Compensation Plan. The Systems shall include one or more compensation plans for each University

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9145 employee classification or group. On the Effective Date of the University's initial Management 9146 Agreement with the Commonwealth, and until changed by the Department of Human Resource 9147 Management, the compensation plan for Classified Employees in the Academic Division and College 9148 shall be the compensation plan in effect immediately prior to that Effective Date, known as the 9149 Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the 9150 University, the compensation plan or plans for all Participating Covered Employees shall be the 9151 compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt 9152 one or more compensation plans for Participating Covered Employees that are non-graded plan(s) 9153 based on internal and external market data and other relevant factors to be determined annually. On 9154 that Effective Date, and until changed by the University, the compensation plan for Medical Center 9155 employees in effect immediately prior to that Effective Date shall continue as the compensation plan for 9156 Any major change in compensation plans for Participating Covered Medical Center employees. 9157 Employees or Medical Center employees shall be reviewed and approved by the Board of Visitors before 9158 that change becomes effective. Any change recommended in the compensation plans may take into 9159 account the prevailing rates in the labor market for the jobs in question, or for similar positions, the 9160 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 9161 University employees shall be authorized and approved only by designated University officers delegated 9162 9163 such authority by the University, and shall be consistent with the approved compensation plan for the 9164 relevant position or classification. Further approval by any other State Agency, governmental body or 9165 officer is not required for setting, adjusting or approving the compensation payable to individual 9166 Participating Covered Employees.

9167 Wages. The Systems shall include policies and procedures for the authorization, computation and
9168 payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and
9169 call back, and for the payment of hourly employees.

9170 Payment of Compensation. The Systems shall include policies and procedures for paying 9171 compensation to employees, including the establishment of one or more payday schedules.

9172 Work Schedule and Workweek. The Systems shall include policies and procedures for the
9173 establishment of, and modifications to, work schedules and workweeks for all University employees,
9174 including alternative work schedules and sites, and telecommuting policies and procedures.

9175 Other Classification and Compensation Policies and Procedures. The Systems may include any other 9176 reasonable classification and compensation policies and procedures the President, acting through the 9177 Executive Vice President and Chief Operating Officer, deems appropriate.

9178 *C. Benefits.*

9179 The Systems shall provide fringe benefits to all benefits eligible employees, including retirement9180 benefits, health care insurance, and life, disability, and accidental death and dismemberment insurance.

9181 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 9182 coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance 9183 9184 programs, employee intramural and recreational passes, and other wellness programs. As provided in subsections B and C of § 23-38.119 of the Act, the University may require Participating Covered 9185 9186 Employees to pay all or a portion of the cost of group life, disability and accidental death and 9187 dismemberment insurance, which may be collected through a payroll deduction program. Participating 9188 Covered Employees shall not be required to present evidence of insurability for basic group life 9189 insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement 9190 System group insurance programs under the terms of and to the extent allowed by subsections B and D 9191 of § 23-38.119 of the Act or any other provision of law.

9192 Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until 9193 that section is amended, the state retirement system, state health insurance program, and state workers' 9194 compensation coverage program as they may be amended from time to time, shall continue to apply to 9195 and govern all eligible University employees. If, however, the University has been or is permitted by 9196 law other than the Act to establish an alternative health insurance plan or an alternative faculty or 9197 Medical Center retirement plan or plans, such alternative health insurance or faculty or Medical Center 9198 retirement plan or plans shall apply to and govern the University employees included in such plan or 9199 plans. The University shall be responsible for managing its non-Medicare eligible retiree health 9200 Subject to the Act, the University may offer an alternative health insurance plan for insurance. 9201 Medicare-eligible retirees.

9202 The Systems may provide different benefits plans for reasonably different groups or classifications of
9203 employees, and may provide benefits to part-time employees. On the Effective Date of the University's
9204 initial Management Agreement with the Commonwealth, and until changed by the appropriate governing
9205 authority, the benefits plans provided by the University to Classified Employees and Participating

9206 Covered Employees shall be the benefits plans provided to that group or classification as of the date 9207 immediately prior to that Effective Date. On or after that Effective Date, alternative University group 9208 life, accidental death and dismemberment, and short- and long-term disability plans may be provided to 9209 eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the 9210 execution of participation agreements as provided in subsections B and C of § 23-38.119 of the Act, 9211 they may be provided by the appropriate State programs, but no contributions to the State programs by the University shall be required for Participating Covered Employees who do not participate in the 9212 9213 Subject to the provisions of the Act, any new plans, programs and material changes programs. 9214 permitted under current law in University employee benefits plans, other than Classified Employee 9215 benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash 9216 Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, 9217 and the authority to implement cafeteria-style benefits for University employees other than Classified 9218 Employees.

9219 Insurance and all proceeds therefrom provided pursuant to § 23-38.119 of the Act shall be exempt 9220 from legal process and may be subject to assignment as provided in subsection A of § 23-38.119. 9221

D. Employee Relations.

9222 1. General. The Systems shall contain provisions that protect the rights and privileges of University 9223 employees consistent with sound management principles and fair employment practice law.

9224 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety 9225 compliance with applicable law and regulations.

9226 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to 9227 the performance of job duties, and free from intimidation or coercion in violation of State or federal 9228 law, including sexual harassment or other discrimination.

9229 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific 9230 to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the 9231 9232 University, have been employed by the University for specified periods of time, or have retired from the 9233 University after lengthy service.

9234 5. Counseling Services. The Systems shall provide counseling services through the State's Employee 9235 Assistance Program or a University Employee Assistance Program to any eligible University employee 9236 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the 9237 circumstances under which the time necessary to participate in such counseling may be granted.

9238 6. Unemployment Compensation. The Systems shall ensure that University employees receive the full 9239 unemployment compensation benefits to which they are legally entitled, and that the University's liability 9240 is limited to legitimate claims for such benefits.

9241 7. Workers' Compensation. The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees' Workers 9242 9243 Compensation Program administered by the Department of Human Resource Management.

8. Performance Planning and Evaluation. The Systems shall include one or more performance 9244 9245 planning and evaluation processes for University employees that (i) establish and communicate the 9246 University's performance expectations, (ii) help develop productive working relationships, (iii) allow 9247 employees to present their views concerning their performance, (iv) identify areas for training or 9248 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify 9249 how superlative or inadequate performance shall be addressed, and (vii) ensure that all University 9250 employees are provided relevant information on the evaluation process. The Systems may include 9251 separate performance and evaluation processes for reasonably distinguishable groups of University 9252 On the Effective Date of the University's initial Management Agreement with the employees. 9253 Commonwealth, the existing merit-based performance management system for faculty and Medical 9254 Center employees shall continue, until amended by the University. On or after that Effective Date, 9255 Academic Division and College nonfaculty salaried Participating Covered Employees may be subject to 9256 a variable merit-based performance management system.

9257 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all 9258 employees and to ensure safe, efficient University operations and compliance with the law, the Systems 9259 shall establish rules of personal conduct and standards of acceptable work performance for University 9260 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for 9261 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or 9262 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more 9263 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action 9264 to employee conduct occurring only when employees are at work or are otherwise representing the 9265 University in an official or work-related capacity, unless otherwise specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new 9266

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and re-employed University salaried nonfaculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of University employees.

9272 10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to 9273 resolve employment-related problems and complaints informally, and shall be permitted to discuss their 9274 concerns freely and without fear of retaliation with immediate supervisors and management. In the 9275 event that such problems cannot be resolved informally, all salaried nonfaculty University employees, 9276 regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in 9277 § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of 9278 the Code of Virginia, to the extent it was applicable to their classification of employees prior to the 9279 Effective Date of the University's initial Management Agreement with the Commonwealth. On that 9280 Effective Date, and until changed by the University, the faculty grievance procedures in effect 9281 immediately prior to the Effective Date shall continue.

9282 11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the
9283 Classified Employee may file a complaint with the Department of Human Resource Management Office
9284 of Equal Employment Services, with the appropriate University office, or with the appropriate federal
9285 agencies. All Participating Covered Employees and applicants for employment after the Effective Date
9286 of the University's initial Management Agreement with the Commonwealth shall file a complaint with the
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12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University 9288 9289 employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the University. These University layoff policies shall govern such 9290 9291 issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) 9292 notice to employees affected by a layoff, (iv) placement options within the University or its respective 9293 major divisions and within other parts of the University, (v) the preferential employment rights, if any, 9294 of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for 9295 recalling employees. In accordance with the terms of the Act, University employees who: (i) were 9296 employed prior to the Effective Date of the University's initial Management Agreement with the 9297 Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition 9298 Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated 9299 because of a reduction in force shall have the same preferential hiring rights with State agencies and 9300 other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of 9301 Virginia. Conversely, the University shall recognize the hiring preference conferred by § 2.2-3201 on 9302 State employees who were hired by a State agency or executive branch institution before the Effective 9303 Date of the University's initial Management Agreement with the Commonwealth and who were separated 9304 after that date by that State agency or executive branch institution because of a reduction in workforce. 9305 If the University has adopted a classification system pursuant to § 23-38.116 of the Act that differs from 9306 the classification system administered by the Department of Human Resource Management, the 9307 University shall classify the separated employee according to its classification system and shall place 9308 the separated employee appropriately. The University may include separate policies for reasonably

9309 distinguishable groups of University employees. On or after the Effective Date of the University's initial
9310 Management Agreement with the Commonwealth, all employees from other State agencies and executive
9311 branch institutions who are placed by the University under the provisions of the State Layoff Policy
9312 shall be Participating Covered Employees.

9313 13. Severance Benefits. In accordance with the terms of the Act, the University shall adopt 9314 severance policies for salaried Participating Covered Employees who are involuntarily separated for 9315 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 9316 9317 employed prior to the Effective Date of the University's initial Management Agreement with the 9318 Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of 9319 Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may 9320 negotiate a formula according to which cash severance benefits may be converted to years of age or 9321 creditable service for Participating Covered Employees who participate in the Virginia Retirement 9322 System. An employee becoming, on such Effective Date, a Covered Employee shall not constitute a 9323 severance or reduction in force to which severance or Workforce Transition Act policies apply.

9324 14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i)
9325 establish and maintain a work environment at the University that is free from the adverse effect of
9326 alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with
9327 the University of Virginia Alcohol and Other Drugs Policy, (iii) describe the range of authorized

9328 disciplinary action, including termination where appropriate, for violations of such policies and 9329 procedures, and the process to be followed in taking such disciplinary action, (iv) provide University 9330 employees access to assistance and treatment for problems involving alcohol and other drugs, (v)9331 provide for the circumstances under which employees are required to report certain violations of the 9332 policies and procedures to their supervisor, and the University is required to report those violations to a 9333 federal contracting or granting agency, (vi) describe the circumstances under which personnel records 9334 of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and 9335 (vii) provide notice to University employees of the scope and content of the University alcohol and other 9336 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal 9337 Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, 9338 reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing 9339 for University positions that are particularly safety sensitive, such as those requiring a Commercial 9340 Driver's License or the provision of patient care.

9341 15. Background Checks. The Systems shall include a process for conducting background checks, 9342 which may include but is not limited to reference checks, educational/professional credentialing checks, 9343 and conviction and driver's records checks on applicants for full-time or part-time positions at the 9344 University, and for addressing situations where employees do not disclose a conviction on their 9345 application or otherwise falsify their application with regard to information concerning their 9346 education/professional credential and/or prior convictions.

9347 16. Other Employee Relations Policies and Procedures. The Systems shall include any other 9348 reasonable employee relations policies or procedures that the President, acting through the Executive 9349 Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited 9350 to, policies or procedures relating to orientation programs for new or re-employed University 9351 employees, an employee suggestion program, the responsibility of University employees for property 9352 placed in their charge, work breaks, inclement weather and emergencies, and employment outside the 9353 University. 9354

E. Leave and Release Time.

9355 The Systems shall include policies and procedures regarding leave for eligible employees. The 9356 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal 9357 uses. The Systems may provide for release time for such matters as the donation of blood, participation 9358 in an employee assistance program and other appropriate employment-related matters. On or after the 9359 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is 9360 adopted by the appropriate authority, the University shall continue to provide leave and release time to 9361 Participating Covered Employees in accordance with the leave and release time policies and procedures 9362 applicable to each classification of employees prior to that Effective Date. On or after that Effective 9363 Date, the University may provide an alternative leave and release time system for salaried nonfaculty 9364 Participating Covered Employees. 9365

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

9366 1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and 9367 procedures to ensure that all aspects of human resources management, including the employment of 9368 University employees, meet all requirements of federal and state law, and of the relevant policies of the 9369 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

9370 2. Employment. The Systems shall include policies and procedures for the recruitment, selection and 9371 hiring of University employees that are based on merit and fitness, including where appropriate a 9372 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference 9373 checks and conviction record checks. On and after the Effective Date of its initial Management 9374 Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies 9375 through the University's job posting system, the Commonwealth's job posting system, and other external 9376 The Systems shall establish designated veterans' re-employment rights in media as appropriate. 9377 accordance with applicable law.

9378 In order to encourage employees to attain the highest level positions for which they are qualified, 9379 and to compensate employees for accepting positions of increased value and responsibility, the Systems 9380 shall include policies and procedures governing the promotion of employees, including the effect of 9381 promotion on an employee's compensation.

9382 On or after the Effective Date of the University's initial Management Agreement with the 9383 Commonwealth, all employees hired from other state agencies shall be Participating Covered 9384 Employees. University Academic Division and College Classified Employees who change jobs within the Academic Division or the College through a competitive employment process - i.e., promotion or 9385 9386 transfer - shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that 9387 9388 decision shall be irrevocable.

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3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable

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9390 notice, where appropriate, of a decision either by the employee or by the University to separate the 9391 employee from the University in accordance with policies governing performance, conduct, or layoff. 9392 G. Information Systems. 9393 The University shall provide an electronic file transfer of information on all salaried University 9394 employees and shall continue to provide the Employee Position Reports to meet the human resources 9395 reporting requirements specified by law or by request of the Governor or the General Assembly, unless 9396 the University is specifically exempted from those requirements. The University shall conduct 9397 assessments to demonstrate its accountability for human resources practices that comply with laws and 9398 regulations. The Department of Human Resource Management and the University have entered into a 9399 Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to 9400 time by agreement of the parties, regarding the specific data and reporting requirements. The 9401 University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the 9402 Department of Human Resources Management. VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND 9403 9404 OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL. 9405 On and after the Effective Date of its initial Management Agreement with the Commonwealth, 9406 University employees shall be subject to the terms and conditions of the Act and the Management 9407 Agreement between the Commonwealth and the University. Classified Employees shall continue to be 9408 subject to the human resources policies and exceptions to those policies adopted or approved by the 9409 Department of Human Resource Management. 9410 In addition, all University employees also shall remain subject to any other human resources policies 9411 adopted by the Board of Visitors applicable to University personnel unless University employees or a 9412 subset thereof are specifically exempted from those other human resources policies either by those other 9413 policies or by this Policy. 9414 9415 ATTACHMENT 3 9416 Memorandum of Understanding 9417 Between the University of Virginia and the 9418 Department of Human Resources Management Regarding 9419 The Reporting of Human Resources Management Data 9420 This Memorandum of Understanding, which may be amended from time to time by the agreement of 9421 all parties, is an attachment to the Policy Governing Human Resources for Participating Covered 9422 Employees and Other University Employees pursuant to the Restructured Higher Education Financial 9423 and Administrative Operations Act of 2005, and is hereby entered into between the University of 9424 Virginia and the Department of Human Resource Management (DHRM). 9425 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 9426 9427 requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so 9428 through efficient and cost-effective methods. 9429 In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be 9430 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 9431 9432 data provided will match DHRM's data values for the designated fields. For salaried "Participating 9433 Covered Employees", the data provided will include the University's data values for the designated 9434 fields. The University will provide a data dictionary to DHRM. The file of designated data will be 9435 specifically described by an addendum to this Memorandum upon the agreement of the University and 9436 DHRM. 9437 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 9438 9439 salary adjustments. The file of relevant personnel actions and designated data to be provided for each 9440 action will be specifically described by an addendum to this Memorandum upon the agreement of the 9441 University and DHRM. 9442 DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses 9443 of employment and compensation actions that are part of the AAP, as demonstration of the University's 9444 compliance with relevant federal and state employment laws and regulations. 9445 The University may key data into the Benefits Enrollment System or provide a batch file, or 9446 employees may use Employee Direct (employee self service). For the self-administered health plans 9447 provided by the University of Virginia Academic Division (State Agency 207) and Medical Center (State 9448 Agency 209), this section is not relevant. 9449 Other reports to be provided by the University include the following:

9450 9451	Monthly Employee Position Report. Annual report on salaried, wage, and contract employees.
9452 9453 9454	The undersigned hereby agree to the provisions contained in the MOU. APPROVALS:
9454 9455 9456	The University of Virginia:
9457	By:Date
9458	Executive Vice President and Chief Operating Officer
9459 9460 9461	Department of Human Resources Management:
9461 9462	By:Date
9463	Director, Department of Human Resources Management
9464	
9465 9466	EXHIBIT R
9400 9467	MANAGEMENT AGREEMENT
9468	BETWEEN
9469	THE COMMONWEALTH OF VIRGINIA
9470	AND
9471 9472	THE UNIVERSITY OF VIRGINIA PURSUANT TO
9473	THE RESTRUCTURED HIGHER EDUCATION
9474	FINANCIAL AND ADMINISTRATIVE OPERATIONS
9475	ACT OF 2005
9476 9477	POLICY GOVERNING
9478	FINANCIAL OPERATIONS AND MANAGEMENT
9479	
9480	THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
9481 9482	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT I. PREAMBLE.
9483	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
9484	4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting
9485	additional authority to institutions of higher education for financial operations and management, subject
9486 9487	to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.
9488	The following provisions of this Policy constitute the adopted Board of Visitors policies regarding
9489	the University of Virginia's financial operations and management.
9490	This Policy is intended to cover the authority that may be granted to the University pursuant to
9491 9492	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
9493	and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers
9494	and authorities granted to the Medical Center by law, to the extent they exceed those granted to the
9495 9496	University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.
9490 9497	<i>II. DEFINITIONS.</i> As used in this policy, the following terms shall have the following meanings, unless the context
9498	requires otherwise:
9499	"Academic Division" means that part of the University known as (State Agency 207).
9500 9501	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
9501 9502	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.
9502 9503	"College" means that part of the University operated as the University of Virginia's College at Wise,
9504	also known as (State Agency 246).
9505 9506	"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
9500 9507	entered into a Management Agreement with the Commonwealth to be governed by the provisions of
9508	Subchapter 3 of the Act.
9509 9510	"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of
9510	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 9511 9512 case of the University of Virginia Medical Center.
- "Effective Date" means the effective date of the initial Management Agreement between the 9513 9514 University and the Commonwealth.
- 9515 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act 9516 between the University and the Commonwealth of Virginia.
- 9517 "Medical Center" means that part of the University consisting of the University of Virginia Medical 9518 Center, known as (State Agency 209), and related health care and health maintenance facilities.
- 9519 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9520 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 9521 general government funds, as defined in the December 20, 2004 Report to the Governor and General 9522 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.
- 9523 "University" means the University of Virginia, consisting of the Academic Division, the College, and 9524 the Medical Center. 9525
 - III. SCOPE OF POLICY.
- 9526 This Policy applies to the University's responsibility for management, investment and stewardship of 9527 all its financial resources, including but not limited to, general, non-general and private funds. This 9528 responsibility includes maintaining an independent uniform system of accounting, financial reporting, 9529 and internal controls adequate to protect and account for the University's financial resources.
- 9530 The University of Virginia's College at Wise shall receive the benefits of this Policy as it is 9531 implemented by the University on behalf of the College at Wise, but the College at Wise shall not 9532 receive any additional independent financial operations and management authority as a result of this 9533 Management Agreement beyond the independent financial operations and management authority that it 9534 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. 9535
- 9536 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
- 9537 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 9538 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 9539 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 9540 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 9541 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 9542 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 9543 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 9544 and procedures. 9545
 - V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.
- The President, acting through the Executive Vice President and Chief Operating Officer, shall 9546 9547 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 9548 9549 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting 9550 principles employed by the Commonwealth, including the use of fund accounting principles, with regard 9551 to the establishment of the underlying accounting records of the University and the allocation and 9552 utilization of resources within the accounting system, including the relevant guidance provided by the 9553 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and 9554 proper use of funds from specific types of fund sources, (iii) provide adequate risk management and 9555 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 9556 9557 the Appropriation Act.
- 9558 The financial management system shall continue to include a financial reporting system to satisfy 9559 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 9560 as specified in the related State Comptroller's Directives, and the University's separately audited 9561 financial statements. To ensure observance of limitations and restrictions placed on the use of the 9562 resources available to the University, the accounting and bookkeeping system of the University shall 9563 continue to be maintained in accordance with the principles prescribed for governmental organizations 9564 by the Governmental Accounting Standards Board.
- 9565 In addition, the financial management system shall continue to provide financial reporting for the 9566 President, acting through the Executive Vice President and Chief Operating Officer, and the Board of 9567 Visitors to enable them to provide adequate oversight of the financial operations of the University.
- 9568 Upon the Effective Date of the initial Management Agreement between the University and the 9569 Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in 9570 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 9571

9572 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems 9573 that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The 9574 University's financial reporting system shall provide (i) summary monthly reports for State agencies 9575 including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the 9576 Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the 9577 Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the 9578 Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a 9579 sufficient level of detail, on such schedule, and using such format that is compatible with the 9580 Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such 9581 other special reports as may be requested from time to time.

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VI. FINANCIAL MANAĞEMENT POLICIES.

9583 The President, acting through the Executive Vice President and Chief Operating Officer, shall create 9584 and implement any and all financial management policies necessary to establish a financial management 9585 system with adequate risk management and internal control processes and procedures for the effective 9586 protection and management of all University financial resources. Such policies will not address the 9587 underlying accounting principles and policies employed by the Commonwealth and the University, but 9588 rather will focus on the internal operations of the University's financial management. These policies 9589 shall include, but need not be limited to, the development of a tailored set of finance and accounting 9590 practices that seek to support the University's specific business and administrative operating 9591 environment in order to improve the efficiency and effectiveness of its business and administrative 9592 functions. In general, the system of independent financial management policies shall be guided by the 9593 general principles contained in the Commonwealth's Accounting Policies and Procedures such as 9594 establishing strong risk management and internal accounting controls to ensure University financial 9595 resources are properly safeguarded and that appropriate stewardship of public funds is obtained 9596 through management's oversight of the effective and efficient use of such funds in the performance of 9597 University programs.

9598 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University
9599 shall continue to follow the Commonwealth's accounting policies until such time as specific alternate
9600 policies can be developed, approved and implemented. Such alternate policies shall include applicable
9601 accountability measures and shall be submitted to the State Comptroller for review and comment before
9602 they are implemented by the University.

9603 *VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.*

9604 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the
9605 University shall have the power and authority to manage all monies received by it. All State general
9606 funds to be allocated to the University shall remain subject to the appropriations process.

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 9607 9608 Assembly the degree to which each public institution of higher education of the Commonwealth has met 9609 9610 the financial and administrative management and educational-related performance benchmarks called 9611 for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to 9612 9613 § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full 9614 fiscal year for which the financial and administrative management and educational-related performance 9615 benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for 9616 all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has 9617 been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain 9618 9619 financial incentives, including interest on the tuition and fees and other non-general fund Educational 9620 and General Revenues deposited into the State Treasury by the public institution of higher education.

9621 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
9622 which it has received such certification from SCHEV, the University is authorized to hold and invest
9623 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary
9624 enterprise funds, and all other non-general fund revenues subject to the following requirements:

9625 i) The University shall deposit such funds in the State Treasury pursuant to the State process in 9626 place at the time of such deposit.

9627 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section 9628 IX below.

9629 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall
9630 hold in escrow all interest earned on the University's tuition and fees and other non-general fund
9631 Educational and General Revenues. Upon receipt of the required State Council of Higher Education for
9632 Virginia certification that the University has met such institutional performance benchmarks and the

conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a 9633 9634 non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, 9635 equivalent to the amount deposited in the escrow account as the financial incentive provided in 9636 subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes related 9637 to its mission. If public institutions of higher education of the Commonwealth are permitted, or the 9638 University in particular is permitted, by the Appropriation Act or other law to retain or be paid the 9639 interest the Commonwealth would have earned on sponsored programs and research funds, then this 9640 paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

9641 iv) If in any given year the University does not receive the certification from the State Council of
9642 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
9643 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall
9644 transfer to the general fund the balance in the escrow account as of June 30 of that year.

9645 v) Beginning on the effective date of its initial Management Agreement with the University until the
9646 beginning of the first fiscal year following the fiscal year for which it has received the required
9647 certification from SCHEV, the University shall continue to deposit tuition and all other non-general
9648 funds with the State Treasurer by the same process that it would have been required to use if it had not
9649 entered into a Management Agreement with the Commonwealth.

9650 vi) On the first business day of the first fiscal year following the fiscal year for which it has
9651 received the required certification from SCHEV, the University may draw down all cash balances held
9652 by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
9653 programs, auxiliary enterprises, and all other non-general fund revenues.

9654 *vii)* The Commonwealth shall retain all funds related to general fund appropriations, but shall pay **9655** these funds to the University as specified in Section IX below.

9656 The University also shall have sum sufficient appropriation authority for all non-general funds as 9657 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 9658 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 9659 9660 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be 9661 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 9662 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to 9663 the Department of Planning and Budget by July 31 of the subsequent fiscal year.

9664 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 9665 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 9666 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the 9667 intent of the Commonwealth and the University that the University shall be exempt from the revenue 9668 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 9669 University that the University shall be entitled to retain non-general fund savings generated from 9670 9671 changes in Commonwealth rates and charges, including but not limited to health, life, and disability 9672 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 9673 9674 by providing the framework for retaining and managing non-general funds, for the receipt of general 9675 funds, and for the use and stewardship of all these funds.

9676 The President, acting through the Executive Vice President and Chief Operating Officer, shall
9677 continue to provide oversight of the University's cash management system which is the framework for
9678 the retention of non-general funds. The Internal Audit Department of the University shall periodically
9679 audit the University's cash management system in accordance with appropriate risk assessment models
9680 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight
9681 shall continue to be provided through the annual audit and assessment of internal controls performed by
9682 the Auditor of Public Accounts.

9683 For the receipt of general and non-general funds, the University shall conform to the Security for
9684 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently
9685 exists and from time to time may be amended.

9686 *VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.*

9687 The President, through the Executive Vice President and Chief Operating Officer, shall continue to
9688 be authorized to create and implement any and all Accounts Receivable Management and Collection
9689 policies as part of a system for the management of University financial resources. The policies shall be
9690 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the
9691 Code of Virginia, such that the University shall take all appropriate and cost effective actions to
9692 aggressively collect accounts receivable in a timely manner.

9693 These shall include, but not be limited to, establishing the criteria for granting credit to University

9694 customers; establishing the nature and timing of collection procedures within the above general 9695 principles; and the independent authority to select and contract with collection agencies and, after 9696 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 9697 collection activities for all University accounts receivable such as reporting delinquent accounts to 9698 credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 9699 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's 9700 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and 9701 the State Comptroller to implement such Programs, and shall provide a quarterly summary report of 9702 receivables to the Department of Accounts in accordance with the reporting procedures established 9703 pursuant to the Virginia Debt Collection Act.

9704 IX. DISBURSEMENT MANAGEMENT.

9705 The President, acting through the Executive Vice President and Chief Operating Officer, shall 9706 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 9707 9708 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 9709 9710 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the 9711 appropriateness of certain goods or services relative to the University's mission, including travel-related 9712 Further, the University's disbursement policy shall continue to provide for the disbursements. 9713 mechanisms by which payments are made including the use of charge cards, warrants, and electronic 9714 payments. Since the University no longer will interface to the CARS system or any replacement for the 9715 CARS system for disbursements, the University shall establish its own mechanisms for electronic 9716 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the 9717 Commonwealth's Debt Set-Off Collection Programs.

9718 Beginning with the fiscal year after the first fiscal year for which it first receives the required
9719 certification from SCHEV, the University may draw down its general fund appropriations (subject to
9720 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.

9721 Such funds shall be available to the University for disbursement as provided in the then-current rules of
9722 the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in
9723 accordance with the following schedule:

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

9729 ii) The University may draw down the sum of all tuition and E&G fees and all other non-general
9730 revenues deposited to the State Treasury each day on the same business day they were deposited; and

9731 iii) The University anticipates that expenditures could exceed available revenues from time to time
9732 during the year if the above disbursement schedule is used. When the University projects a cash deficit
9733 is likely in activities supported by general fund appropriations, the University may make a request to the
9734 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury,
9735 in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

9736 These disbursement policies shall authorize the President, acting through the Executive Vice 9737 President and Chief Operating Officer, to independently select, engage, and contract for such 9738 consultants, accountants, and financial experts, and other such providers of expert advice and 9739 consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may 9740 be necessary or desirable in his or her discretion. The policies also shall continue to include the ability 9741 to locally manage and administer the Commonwealth's credit card and cost recovery programs related 9742 to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those 9743 programs, provided that the University shall submit the credit card and cost recovery aspects of its 9744 financial and operations policies to the State Comptroller for review and comment prior to implementing 9745 those aspects of those policies. The disbursement policies shall ensure that adequate risk management 9746 and internal control procedures shall be maintained over previously decentralized processes for public 9747 records, payroll, and non-payroll disbursements. The University shall continue to provide summary 9748 quarterly prompt payment reports to the Department of Accounts in accordance with the reporting 9749 procedures established pursuant to the Prompt Payment Act.

9750 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 principles 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

9755 State Comptroller for review and comment prior to their implementation by the University.
9756 X. DEBT MANAGEMENT.

9757 The President, acting through the Executive Vice President and Chief Operating Officer, shall
9758 continue to be authorized to create and implement any and all debt management policies as part of a
9759 system for the management of University financial resources.

9760 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes, 9761 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury 9762 Board, and that are consistent with debt capacity and management policies and guidelines established 9763 by its Board of Visitors, without obtaining the consent of any legislative body, elected official, 9764 commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without 9765 any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds 9766 9767 pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any 9768 new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for 9769 review and comment prior to its adoption by the University.

9770 The University recognizes that there are numerous types of financing structures and funding sources 9771 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 9772 the President, acting through the Executive Vice President and Chief Operating Officer, within the 9773 context of the overall portfolio to ensure that any financial product or structure is consistent with the 9774 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through 9775 the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain 9776 a full understanding of the transaction, including (i) the identification of potential risks and benefits, 9777 and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or 9778 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be 9779 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

9780 The University currently has established guidelines relating to the total permissible amount of
9781 outstanding debt by monitoring University-wide ratios that measure debt compared to University
9782 balance-sheet resources and annual debt service burden. These measures are monitored and reviewed
9783 regularly in light of the University's current strategic initiatives and expected debt requirements. The
9784 Board of Visitors shall periodically review and approve the University's debt capacity and debt
9785 management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of
9786 Virginia for review and comment prior to their adoption by the University.

9787 XI. INVESTMENT POLICY.

9788It is the policy of the University to invest its operating and reserve funds solely in the interest of the9789University and in a manner that will provide the highest investment return with the maximum security9790while meeting daily cash flow demands and conforming to the Investment of Public Funds Act9791(§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence9792and diligence under the circumstances then prevailing that a prudent person acting in a like capacity9793and familiar with such matters would use in the conduct of an enterprise of a like character and with9794like aims.

9795 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.

9797 The Board of Visitors shall periodically review and approve the investment guidelines governing the **9798** University's operating and reserve funds.

9799 XII. INSURANCE AND RISK MANAGEMENT.

9800 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any 9801 intent during the next biennium to withdraw from any insurance or risk management program made 9802 available to the University through the Commonwealth's Division of Risk Management and in which the 9803 University is then participating, to enable the Commonwealth to complete an adverse selection analysis 9804 of any such decision and to determine the additional costs to the Commonwealth that would result from 9805 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University 9806 proceeds to withdraw from the insurance or risk management program, the University shall reimburse 9807 the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the 9808 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University 9809 and the Commonwealth.

4. That the provisions of the first, second, and third enactments of this Act shall supersede the terms of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, that was entered into prior to January 1, 2006. Any such management agreement entered into prior to January 1, 2006, shall be deemed incorporated into this Act.

9815 5. That the provisions of the first, second, and third enactments of this Act shall expire at

midnight on June 30, 2010. The expiration of such enactments shall automatically result in the
expiration of the provisions of any management agreement between the Commonwealth and
Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia,
and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and
incorporated into this Act.