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SENATE BILL NO. 705

Offered January 16, 2008

A BILL to amend and reenact the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, relating to the management agreement between the Commonwealth of Virginia and the College of William and Mary.

Patron—Norment

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006 is amended and reenacted as follows:

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

CHAPTER 2.

MANAGEMENT AGREEMENT

BY AND BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

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

RECITALS

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

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

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

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

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

AGREEMENT

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

ARTICLE 1. DEFINITIONS.

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

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

"Agreement" means "Management Agreement."

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

"College" means the College of William and Mary in Virginia (State Agency 204) and the Virginia

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59 Institute of Marine Science (State Agency 268).

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

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

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

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

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

73 "Public institution of higher education" means those two-year and four-year institutions enumerated in  
74 § 23-14 of the Code of Virginia.

## 75 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

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

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

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

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

121 SECTION 2.1.3. Reimbursement by the College of Certain Costs. By July 1 of each odd-numbered  
 122 year, the College shall inform the Secretary of Finance of any intent during the next biennium to  
 123 withdraw from any health or other group insurance or risk management program made available to the  
 124 College through any agency, body corporate, political subdivision, authority, or other entity of the  
 125 Commonwealth, and in which the College is then participating, to enable the Commonwealth's actuaries  
 126 to complete an adverse selection analysis of any such decision and to determine the additional costs to  
 127 the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs  
 128 to the Commonwealth, the College proceeds to withdraw from such health or other group insurance or  
 129 risk management program, the College shall, pursuant to subdivision D 2 c of § 23-38.88, reimburse the  
 130 Commonwealth for all such additional costs attributable to such withdrawal as determined by the  
 131 Commonwealth's actuaries.

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

139 SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to  
 140 § 23-38.110 of the Act and subject to the provisions of this Management Agreement, the College may  
 141 be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ 2.2-4300  
 142 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the  
 143 VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of  
 144 Visitors shall adopt and comply with procurement policies that are based upon competitive principles  
 145 and seek competition to the maximum practical degree. The Policy Governing the Procurement of  
 146 Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules  
 147 Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules)  
 148 attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA  
 149 required by subsections A and B of § 23-38.110 of the Act.

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

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

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

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

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

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

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

208 SECTION 2.2. State Goals.

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

214 1. In addition to its six-year target of achieving \$68 million in external research by 2011-12, the  
215 College, including the Virginia Institute of Marine Science, commits to match from institutional funds,  
216 other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided  
217 by the State in the Appropriation Act above the amount provided from institutional funds for research in  
218 2005-06.

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

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

243 SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of

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

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

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

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

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

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

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

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

303 SECTION 2.4.1. The Appropriation Act. The Commonwealth and the College agree that, pursuant  
 304 to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is

305 a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the  
306 Act, or this Management Agreement, or the Board of Visitors policies attached to this Management  
307 Agreement as Exhibits G through L, the provisions of the Appropriation Act shall control, and shall  
308 continue to control unless provided otherwise by law.

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

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

320 SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of  
321 § 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,  
322 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,  
323 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  
324 of Virginia, the College shall remain a public institution of higher education of the Commonwealth  
325 following the effective date of this Management Agreement, and shall retain the authority granted and  
326 any obligations required by such provisions, unless and until provided otherwise by law other than the  
327 Act. In addition, the College shall retain the authority, and any obligations related to the exercise of  
328 such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et  
329 seq.), Chapter 3 (§ 23-14 et seq.), Chapter 3.2 (§ 23-30.23 et seq.), Chapter 3.3 (§ 23-30.39 et seq.),  
330 Chapter 4 (§ 23-31 et seq.), Chapter 4.01 (§ 23-38.10:2 et seq.), Chapter 4.1 (§ 23-38.11 et seq.),  
331 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  
332 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  
333 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  
334 seq.), unless and until provided otherwise by law other than the Act.

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

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

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

### 348 ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, 349 MANAGEMENT AGREEMENT.

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

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

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

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

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

383 ARTICLE 4. GENERAL PROVISIONS.

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

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

391 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June  
 392 30, 2010.

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

396 EXHIBIT G

397

398 MANAGEMENT AGREEMENT

399 BETWEEN

400 THE COMMONWEALTH OF VIRGINIA

401 AND

402 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

403 PURSUANT TO

404 THE RESTRUCTURED HIGHER EDUCATION

405 FINANCIAL AND ADMINISTRATIVE OPERATIONS

406 ACT OF 2005

407

408 POLICY GOVERNING CAPITAL PROJECTS

409

410 THE RECTOR AND VISITORS OF

411 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

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  
 416 College of William and Mary in Virginia may be delegated the authority to establish its own system for  
 417 undertaking the implementation of its capital projects. In general, status as a Covered Institution is  
 418 designed to replace the post-authorization system of reviews, approvals, policies and procedures carried  
 419 out by a variety of central State agencies, and also the traditional pre-authorization approval process for  
 420 projects funded entirely with non-general funds and without any proceeds from State Tax Supported  
 421 Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be  
 422 governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together  
 423 with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the  
 424 Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods,  
 425 Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the  
 426 adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state  
 427 general fund appropriation, State Tax Supported Debt, or funding from other sources.

428 This Policy is intended to encompass and implement the authority that may be granted to the College  
429 pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant  
430 to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of  
431 the Act and the College'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.

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

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

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

452 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
453 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions  
454 of the individual public institutions of higher education of the Commonwealth, and as provided in  
455 §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

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

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

## 463 III. SCOPE OF POLICY.

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 programs  
469 for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services  
470 and construction services, 4) design reviews and code approvals for capital projects, 5) environmental  
471 impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land  
472 dispositions, 9) project management systems, and 10) reporting requirements.

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

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

## 482 V. CAPITAL PROGRAM.

483 The President shall adopt a system for developing one or more capital project programs that defines  
484 or define the capital needs of the College for a given period of time consistent with the College's  
485 published Master Plan. This process may or may not mirror the Commonwealth's requirements for  
486 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major  
487 Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General  
488 Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements  
489 for capital plans. The Board may approve amendments to the program for Major Capital Projects

490 annually or more often if circumstances warrant.

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

#### 497 VI. AUTHORIZATION OF CAPITAL PROJECTS

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

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

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

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

#### 515 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 516 SERVICES.

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

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

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

527 Making procurement rules clear in advance of any competition;

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

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

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

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

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

545 A prequalification procedure for contractors or products;

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

548 A prompt payment procedure.

549 The College also may enter into cooperative arrangements with other private or public health or  
 550 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,

551 in the judgment of the College, the purposes of this Policy will be furthered.

552 VIII. DESIGN REVIEWS AND CODE APPROVALS.

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

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

582 IX. ENVIRONMENTAL IMPACT REPORTS.

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

590 X. BUILDING DEMOLITIONS.

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

599 XI. BUILDING OR LAND ACQUISITIONS.

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

611 A. Environmental and Land Use Considerations.

612 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition.

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

619 B. Infrastructure and Site Condition.

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

630 C. Title and Survey.

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

639 D. Appraisal.

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

642 XII. BUILDING OR LAND DISPOSITIONS.

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

648 XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

659 XIV. REPORTING REQUIREMENTS.

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

673 EXHIBIT H

674  
 675 MANAGEMENT AGREEMENT  
 676 BETWEEN  
 677 THE COMMONWEALTH OF VIRGINIA  
 678 AND  
 679 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
 680 PURSUANT TO  
 681 THE RESTRUCTURED HIGHER EDUCATION  
 682 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
 683 ACT OF 2005

684  
 685 POLICY GOVERNING  
 686 LEASES OF REAL PROPERTY

687  
 688 THE RECTOR AND VISITORS OF  
 689 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
 690 POLICY GOVERNING LEASES OF REAL PROPERTY

691 I. PREAMBLE.

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

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

706 II. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

726 III. SCOPE OF POLICY.

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

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

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

736 and procedures.

737 V. REQUIREMENTS FOR LEASES.

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

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

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

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

751 C. Approval of Form of Lease Required.

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

753 D. Execution of Leases.

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

761 E. Capital Leases.

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

765 F. Compliance with Applicable Law.

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

768 G. Certification of Occupancy.

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

771  
772 EXHIBIT I

773  
774 MANAGEMENT AGREEMENT  
775 BETWEEN  
776 THE COMMONWEALTH OF VIRGINIA  
777 AND  
778 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
779 PURSUANT TO  
780 THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE  
781 OPERATIONS ACT OF 2005

782  
783 POLICY GOVERNING  
784 INFORMATION TECHNOLOGY

785  
786 THE RECTOR AND VISITORS OF  
787 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
788 POLICY GOVERNING INFORMATION TECHNOLOGY

789 I. PREAMBLE.

790 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter  
791 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions  
792 of higher education in the Commonwealth of Virginia that have entered into a Management Agreement  
793 with the Commonwealth "may be exempt from the provisions governing the Virginia Information  
794 Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the  
795 Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title  
796 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such]

797 institution shall comply with, policies" that govern the exempted provisions. See § 23-38.111 of the  
798 Code of Virginia. This Information Technology Policy shall become effective upon the effective date of  
799 a Management Agreement authorized by subsection D of § 23-38.88 and § 23-38.97 of the Act between  
800 the Commonwealth and the College of William and Mary in Virginia that incorporates this Policy.

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

### 803 II. DEFINITIONS.

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

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

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

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

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

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

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

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

### 820 III. SCOPE OF POLICY.

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

826 This Policy shall govern the College's information technology strategic planning, expenditure  
827 reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and  
828 audits conducted within, by, or on behalf of the College. Upon the effective date of a Management  
829 Agreement between the Commonwealth and the College, as authorized by subsection D of § 23-38.88  
830 and § 23-38.111, therefore, the College shall be exempt from those provisions of the Code of Virginia,  
831 including those provisions of Chapter 20.1 (§ 2.2-2005 et seq.) (Virginia Information Technologies  
832 Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information Technology Investment Board) of Chapter  
833 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the College's information  
834 technology strategic planning, expenditure reporting, budgeting, project management, infrastructure,  
835 architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College;  
836 provided, however, that the College still shall be subject to those provisions of Chapter 20.1 (§ 2.2-2005  
837 et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2-2457 et seq.) (Information  
838 Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that are applicable to  
839 public institutions of higher education of the Commonwealth and that do not govern information  
840 technology strategic planning, expenditure reporting, budgeting, project management, infrastructure,  
841 architecture, ongoing operations, security, and audits within, by, or on behalf of the College.

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

### 847 IV. GENERAL PROVISIONS.

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

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

#### 857 B. Strategic Planning.

858 The President shall be responsible for overall IT strategic planning at the College, which shall be

859 linked to and in support of the College's overall strategic plan.

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

865 C. Expenditure Reporting and Budgeting.

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

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

872 The College shall be specifically exempt from:

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

875 §§ 2.2-2022 through 2.2-2024 of the Code of Virginia (Virginia Technology Infrastructure Fund), as  
876 they currently exist and from time to time may be amended; and

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

879 D. Project Management.

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

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

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

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

899 The College shall be specifically exempt from:

900 § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project  
901 management), as it currently exists and from time to time may be amended;

902 §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management),  
903 as they currently exist and from time to time may be amended; and

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

906 The State CIO and the Information Technology Investment Board shall continue to have the authority  
907 regarding project suspension and termination as provided in § 2.2-2015 and in subdivision A 3 of  
908 § 2.2-2458, respectively, and the State CIO and the Information Technology Investment Board shall  
909 continue to provide the College with reasonable notice of, and a reasonable opportunity to correct, any  
910 identified problems before a project is terminated.

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

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

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

919 For purposes of implementing this Policy, the President shall appoint an existing College employee

920 to serve as a liaison between the College and the State CIO.

921 F. Audits.

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

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

932 EXHIBIT J

933

934 MANAGEMENT AGREEMENT

935 BETWEEN

936 THE COMMONWEALTH OF VIRGINIA

937 AND

938 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

939 PURSUANT TO

940 THE RESTRUCTURED HIGHER EDUCATION

941 FINANCIAL AND ADMINISTRATIVE OPERATIONS

942 ACT OF 2005

943

944 POLICY GOVERNING

945 THE PROCUREMENT OF GOODS, SERVICES,

946 INSURANCE, AND CONSTRUCTION AND

947 THE DISPOSITION OF SURPLUS MATERIALS

948

949 THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM AND MARY

950 POLICY GOVERNING THE PROCUREMENT OF

951 GOODS, SERVICES, INSURANCE AND CONSTRUCTION

952 AND THE DISPOSITION OF SURPLUS MATERIALS

953 I. PREAMBLE.

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

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

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

969 II. DEFINITIONS.

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

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

974 "Agreement" means "Management Agreement."

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

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

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

- 982 "Effective Date" means the effective date of the Management Agreement.
- 983 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
984 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions  
985 of the individual public institutions of higher education of the Commonwealth.
- 986 "Goods" means all material, equipment, supplies, and printing, including information technology and  
987 telecommunications goods such as automated data processing hardware and software.
- 988 "Management Agreement" means the agreement required by subsection D of § 23-38.88 between the  
989 Commonwealth of Virginia, and the College of William and Mary in Virginia.
- 990 "Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction"  
991 attached to this Policy as Attachment 1.
- 992 "Services" as used in this Policy means any work performed by an independent contractor wherein  
993 the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of  
994 equipment, materials and supplies, and shall include both professional services, which include the  
995 practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and  
996 nonprofessional services, which include any service not specifically identified as professional services.
- 997 "Surplus materials" means personal property including, but not limited to, materials, supplies,  
998 equipment and recyclable items, that are determined to be surplus by the College.
- 999 III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
- 1000 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
1001 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
1002 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
1003 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
1004 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,  
1005 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
1006 implementation of those duties and responsibilities pursuant to the College's usual delegation policies  
1007 and procedures.
- 1008 IV. GENERAL PROVISIONS.
- 1009 A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement  
1010 Policies.
- 1011 The College has had decentralization and pilot program autonomy in many procurement functions  
1012 and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy  
1013 previously granted to the College in Item 330 E of the 1994 Appropriation Act. This Policy therefore is  
1014 adopted by the Board of Visitors to enable the College to develop a procurement system, as well as a  
1015 surplus materials disposition system. Any College electronic procurement system shall integrate or  
1016 interface with the Commonwealth's electronic procurement system.
- 1017 This Policy shall be effective on the Effective Date of the College's initial Management Agreement  
1018 with the Commonwealth. The implementing policies and procedures adopted by the President to  
1019 implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors  
1020 affecting procurements at the College, including policies regarding the nature and amounts of  
1021 procurements that may be undertaken without the approval of the Board of Visitors, or of the President.
- 1022 B. Scope and Purpose of College Procurement Policies.
- 1023 This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be  
1024 the policy of the College that procurements conducted by the College result in the purchase of high  
1025 quality goods and services at reasonable prices, and that the College be free, to the maximum extent  
1026 permitted by law and this Policy, from constraining policies that hinder the ability of the College to do  
1027 business in a competitive environment. This Policy, together with the Rules Governing Procurement of  
1028 Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all  
1029 procurements undertaken by the College, regardless of the source of funds.
- 1030 C. Collaboration, Communication, and Cooperation with the Commonwealth.
- 1031 The College is committed to developing, maintaining, and sustaining collaboration, communication,  
1032 and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with  
1033 the Offices of the Secretaries of Administration and Technology, the Department of General Services,  
1034 and the Virginia Information Technologies Agency. Identifying business objectives and goals common  
1035 to both the College and the Commonwealth and the mechanisms by which such objectives and goals  
1036 may be jointly pursued and achieved are among the desired outcomes of such collaboration,  
1037 communication, and cooperation.
- 1038 D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.
- 1039 The College is committed to maximizing its internal operational efficiencies, economies of scale  
1040 among institutions of higher education, and the leveraged buying power of the Commonwealth as a  
1041 whole.
- 1042 Consistent with this commitment, the College:

1043 i) May purchase from and participate in all statewide contracts for goods and services, including  
 1044 information technology goods and services, except that the College shall purchase from and participate  
 1045 in contracts for communications services and telecommunications facilities entered into by the Virginia  
 1046 Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an exception is  
 1047 provided in the Appropriation Act or by other law, and provided that orders not placed through  
 1048 statewide contracts shall be processed directly or by integration or interface through the  
 1049 Commonwealth's electronic procurement system;

1050 ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement  
 1051 system; and

1052 iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is  
 1053 consistent with the Commonwealth's SWAM program.

#### 1054 E. Implementation.

1055 To effect its implementation under the Act, and if the College remains in continued substantial  
 1056 compliance with the terms and conditions of this Management Agreement with the Commonwealth  
 1057 pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the College's procurement  
 1058 of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt  
 1059 from the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2, except  
 1060 § 2.2-4342 and §§ 2.2-4367 through 2.2-4377; the oversight of the Virginia Information Technologies  
 1061 Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the Information Technology Investment  
 1062 Board, Article 20 (§ 2.2-2457 et seq.) of Chapter 24 of Title 2.2; the state agency requirements  
 1063 regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of  
 1064 surplus materials in §§ 2.2-1124 and 2.2-1125; the requirement to purchase from the Department for the  
 1065 Blind and Vision Impaired (VIB) (§ 2.2-1117); and any other state statutes, rules, regulations or  
 1066 requirements relating to the procurement of goods, services, insurance, and construction, including but  
 1067 not limited to Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia,  
 1068 regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the  
 1069 Virginia Department of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2 of  
 1070 the Code of Virginia, regarding the review and the oversight by the Division of Engineering and  
 1071 Buildings of the Virginia Department of General Services of contracts for the construction of College  
 1072 capital projects and construction-related professional services (§ 2.2-1132).

### 1073 V. COLLEGE PROCUREMENT POLICIES.

#### 1074 A. General Competitive Principles.

1075 In connection with College procurements and the processes leading to award of contracts for goods,  
 1076 services, insurance, and construction, the College is committed to:

1077 Seeking competition to the maximum practical degree, taking into account the size of the anticipated  
 1078 procurement, the term of the resulting contract and the likely extent of competition;

1079 Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or  
 1080 the appearance of any impropriety;

1081 Making procurement rules clear in advance of any competition;

1082 Providing access to the College's business to all qualified vendors, firms and contractors, with no  
 1083 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in  
 1084 cooperative procurements and to meet special needs of the College;

1085 Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular  
 1086 vendor; and

1087 Providing for the free exchange of information between the College, vendors, firms or contractors  
 1088 concerning the goods or services sought and offered while preserving the confidentiality of proprietary  
 1089 information.

#### 1090 B. Access to Records.

1091 Procurement records shall be available to citizens or to interested persons, firms or corporations in  
 1092 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et  
 1093 seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to  
 1094 § 2.2-3705.1 (7), § 2.2-3705.1 (12), or § 2.2-3705.4 (4), or other applicable exemptions of the Virginia  
 1095 Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act.

#### 1096 C. Cooperative Procurements and Alliances.

1097 In circumstances where the College determines and documents that statewide contracts for goods and  
 1098 services, including information technology and telecommunications goods and services, do not provide  
 1099 goods and services to the College that meet its business goals and objectives, the College is authorized  
 1100 to participate in cooperative procurements with other public or private organizations or entities, including  
 1101 other educational institutions, public-private partnerships, public bodies, charitable organizations, health  
 1102 care provider alliances and purchasing organizations, so long as the resulting contracts are procured  
 1103 competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods,  
 1104 Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this

1105 Policy are furthered. In the event the College engages in a cooperative contract with a private  
 1106 organization or public-private partnership and the contract was not competitively procured pursuant to  
 1107 subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and  
 1108 Construction attached to this Policy as Attachment 1, use of the contract by other state agencies,  
 1109 institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative  
 1110 contracts shall conform to the business requirements of the Commonwealth's electronic procurement  
 1111 system, including the requirement for payment of applicable fees. By October 1 of each year, the  
 1112 President, or his designee, shall make available to the Secretaries of Administration and Technology, the  
 1113 Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all  
 1114 cooperative contracts and alliances entered into or used during the prior fiscal year.

1115 D. Training; Ethics in Contracting.

1116 The President, acting through his designee, shall take all necessary and reasonable steps to assure (i)  
 1117 that all College officials responsible for and engaged in procurements authorized by the Act and this  
 1118 Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public  
 1119 Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter  
 1120 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any  
 1121 procedures adopted by the President to implement this Policy are responsible for and engaged in such  
 1122 procurements, and (iii) that compliance with the Act and this Policy are achieved.

1123 The College shall maintain an ongoing program to provide professional development opportunities to  
 1124 its buying staff and to provide methods training to internal staff who are engaged in placing  
 1125 decentralized small purchase transactions.

1126 E. Ethics and College Procurements.

1127 In implementing the authority conferred by this Policy, the personnel administering any procurement  
 1128 shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting  
 1129 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title  
 1130 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31  
 1131 (§ 2.2-3100 et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ 18.2-498.1 et  
 1132 seq.) of Chapter 12 of Title 18.2.

1133 VI. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.

1134 The policy and procedures for disposal for surplus materials shall provide for the sale,  
 1135 environmentally-appropriate disposal, or recycling of surplus materials by the College and the retention  
 1136 of the resulting proceeds by the College.

1137 VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND  
 1138 PROCEDURES.

1139 The President shall adopt one or more comprehensive sets of specific procurement policies and  
 1140 procedures for the College, which, in addition to the Rules, implement applicable provisions of law and  
 1141 this Policy. College procurements shall be carried out in accordance with this Policy, the Rules, and any  
 1142 implementing policies and procedures adopted by the College. The implementing policies and  
 1143 procedures (i) shall include the delegation of procurement authority by the Board to appropriate College  
 1144 officials who shall oversee College procurements of goods, services, insurance, and construction,  
 1145 including a grant of authority to such officials to engage in further delegation of authority as the  
 1146 President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in  
 1147 Part V above.

1148 Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall  
 1149 become effective on the Effective Date of the College's initial Management Agreement with the  
 1150 Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the  
 1151 College on behalf of the College for goods, services, insurance, and construction. This Policy, the  
 1152 Rules, and any implementing policies and procedures adopted by the College shall not affect existing  
 1153 contracts already in effect.

1154 The Rules and College implementing policies and procedures for all College procurements of goods,  
 1155 services, insurance, and construction, and the disposition of surplus property shall be substantially  
 1156 consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education  
 1157 and their Vendors in their form as of the effective date of this Policy and as amended or changed in the  
 1158 future, and with College procedures specific to the Acquisition of Goods and Services. The Rules and  
 1159 College implementing policies and procedures shall implement a system of competitive negotiation, and  
 1160 competitive sealed bidding when appropriate, for goods, services, including professional services as  
 1161 defined in the Rules, insurance, and construction.

1162 VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

1163 A. Protests, Appeals and Debarment.

1164 The Rules and College implementing policies and procedures for procurements other than capital  
 1165 outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors.

1166 Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or  
 1167 ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times  
 1168 specified by the Rules. Remedies available shall be limited to reversal of the action challenged or,  
 1169 where a contract already being performed is declared void, compensation for the cost of performance up  
 1170 to the time of such declaration. The Rules and College implementing policies and procedures also may  
 1171 establish the basis and process for debarment of any vendor, firm or contractor.

1172 B. Prompt Payment of Contractors and Subcontractors.

1173 The Rules and College implementing policies and procedures shall include provisions related to  
 1174 prompt payment of outstanding invoices, which shall include payment of interest on properly-presented  
 1175 invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the  
 1176 lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The  
 1177 payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or  
 1178 the date established by the contract. All contracts also shall require prompt payment of subcontractors  
 1179 by the general contractor, upon receipt of payment by the College.

1180 C. Types of Procurements.

1181 The Rules and College implementing policies and procedures shall implement a system of  
 1182 competitive negotiation for professional services, as defined in the Rules, and shall implement  
 1183 purchasing procedures developed to maximize competition given the size and duration of the contract,  
 1184 and the needs of the College. Such policies and procedures may include special provisions for  
 1185 procurements such as emergency procurements, sole source procurements, brand name procurements,  
 1186 small purchases, procurements in which only one qualified vendor responds, and others.

1187 D. Approval and Public Notice of Procurements.

1188 The Rules and College implementing policies and procedures shall provide for approval of  
 1189 solicitation documents by an authorized individual and for reasonable public notice of procurements,  
 1190 given the size and nature of the need and the applicability of any Virginia Freedom of Information Act  
 1191 exemption.

1192 E. Administration of Contracts.

1193 The Rules and College implementing policies and procedures shall contain provisions related to the  
 1194 administration of contracts, including contract claims, modifications, extensions and assignments.

1195 F. Non-Discrimination.

1196 The Rules and College implementing policies and procedures shall provide for a non-discriminatory  
 1197 procurement process that prohibits discrimination because of race, religion, color, sex or national origin  
 1198 of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate  
 1199 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small  
 1200 businesses and to promote and encourage a diversity of suppliers.

1201  
 1202 ATTACHMENT 1

1203  
 1204 Rules Governing Procurement of Goods, Services, Insurance, and Construction  
 1205 by a Public Institution of Higher Education of the Commonwealth of Virginia  
 1206 Governed by Subchapter 3 of the  
 1207 Restructured Higher Education Financial and Administrative Operations Act,  
 1208 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia

1209 In accordance with the provisions of the Restructured Higher Education Financial and Administrative  
 1210 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in  
 1211 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the  
 1212 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth  
 1213 pursuant to Subchapter 3 of the Act, has adopted the following Rules Governing Procurement of Goods,  
 1214 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and  
 1215 construction by the Institution, excluding the University of Virginia Medical Center:

1216 § 1. Purpose. -

1217 The purpose of these Rules is to enunciate the public policies pertaining to procurement of good,  
 1218 services, insurance, and construction by the Institution from nongovernmental sources, to include  
 1219 governmental procurement that may or may not result in monetary consideration for either party. These  
 1220 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the  
 1221 Institution, the contractor, or some third party is providing the consideration.

1222 § 2. Scope of Procurement Authority. -

1223 Subject to these Rules, and the Institution's continued substantial compliance with the terms and  
 1224 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the  
 1225 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and  
 1226 exercise all of the authority relating to procurement of goods, services, insurance, and construction,  
 1227 including but not limited to capital outlay-related procurement and information technology-related

1228 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring  
1229 Act.

1230 § 3. Competition is the Priority. -

1231 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all  
1232 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any  
1233 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's  
1234 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body  
1235 of the Institution that competition be sought to the maximum feasible degree, that procurement  
1236 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad  
1237 flexibility in fashioning details of such competition, that the rules governing contract awards be made  
1238 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing  
1239 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely  
1240 exchange information concerning what is sought to be procured and what is offered. The Institution  
1241 may consider best value concepts when procuring goods and nonprofessional services, but not  
1242 construction or professional services. Professional services will be procured using a qualification-based  
1243 selection process. The criteria, factors, and basis for consideration of best value and the process for the  
1244 consideration of best value shall be as stated in the procurement solicitation.

1245 § 4. Definitions. -

1246 As used in these Rules:

1247 "Affiliate" means an individual or business that controls, is controlled by, or is under common  
1248 control with another individual or business. A person controls an entity if the person owns, directly or  
1249 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition  
1250 "voting security" means a security that (i) confers upon the holder the right to vote for the election of  
1251 members of the board of directors or similar governing body of the business or (ii) is convertible into,  
1252 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general  
1253 partnership interest shall be deemed to be a voting security.

1254 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,  
1255 and various elements of required services that in total are optimal relative to the Institution's needs.

1256 "Business" means any type of corporation, partnership, limited liability company, association, or sole  
1257 proprietorship operated for profit.

1258 "Competitive negotiation" is a method of contractor selection that includes the following elements:

1259 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be  
1260 procured, specifying the factors that will be used in evaluating the proposal and containing or  
1261 incorporating by reference the other applicable contractual terms and conditions, including any unique  
1262 capabilities or qualifications that will be required of the contractor.

1263 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of  
1264 proposals by publication in a newspaper or newspapers of general circulation in the area in which the  
1265 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that  
1266 can be reasonably anticipated to submit proposals in response to the particular request. Public notice  
1267 also shall be published on the Department of General Services' central electronic procurement website  
1268 and may be published on other appropriate websites. In addition, proposals may be solicited directly  
1269 from potential contractors.

1270 3. a. Procurement of professional services. The procurement of professional services for capital  
1271 projects shall be conducted using a qualification-based selection process. The Institution shall engage in  
1272 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the  
1273 basis of initial responses and with emphasis on professional competence, to provide the required  
1274 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to  
1275 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project,  
1276 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors  
1277 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss  
1278 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where  
1279 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors  
1280 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this  
1281 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information  
1282 developed in the selection process to this point, the Institution shall select in the order of preference two  
1283 or more offerors whose professional qualifications and proposed services are deemed most meritorious.  
1284 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory  
1285 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the  
1286 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be  
1287 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a  
1288 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and

1289 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly  
1290 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to  
1291 that offeror.

1292 A contract for architectural or professional engineering services relating to construction projects may  
1293 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience  
1294 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under  
1295 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of  
1296 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the  
1297 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set  
1298 in the Request for Proposal. Any unused amounts from any contract term may be carried forward.  
1299 Competitive negotiations for such contracts may result in awards to more than one offeror provided the  
1300 Request for Proposal stated the potential for a multi-vendor award. Multiphase professional services  
1301 contracts satisfactory and advantageous to the Institution for environmental, location, design and  
1302 inspection work regarding construction of infrastructure projects may be negotiated and awarded based  
1303 on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier  
1304 phases is necessary to provide information critical to the negotiation of a fair and reasonable price for  
1305 succeeding phases. Prior to the procurement of any such contract, the Institution shall state the  
1306 anticipated intended total scope of the project and determine in writing that the nature of the work is  
1307 such that the best interests of such Institution require awarding the contract.

1308 b. Procurement of other than professional services. Selection shall be made of two or more offerors  
1309 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the  
1310 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
1311 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but  
1312 need not be the sole determining factor. After negotiations have been conducted with each offeror so  
1313 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and  
1314 shall award the contract to that offeror. When the terms and conditions of multiple awards are so  
1315 provided in the Request for Proposal, awards may be made to more than one offeror. Should the  
1316 Institution determine in writing and in its sole discretion that only one offeror has made the best  
1317 proposal, a contract may be negotiated and awarded to that offeror.

1318 "Competitive sealed bidding" is a method of contractor selection, other than for professional services,  
1319 which includes the following elements:

1320 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications  
1321 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided  
1322 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite  
1323 qualifications of potential contractors. When it is impractical to prepare initially a purchase description  
1324 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of  
1325 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been  
1326 qualified under the criteria set forth in the first solicitation.

1327 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by  
1328 publication on the Department of General Services' central electronic procurement website. Public notice  
1329 also may be published in a newspaper of general circulation or on other appropriate websites, or both.  
1330 In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall  
1331 include businesses selected from a list made available by the Department of Minority Business  
1332 Enterprise.

1333 3. Public opening and announcement of all bids received.

1334 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include  
1335 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria  
1336 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which  
1337 are helpful in determining acceptability.

1338 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of  
1339 multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

1340 "Construction" means building, altering, repairing, improving or demolishing any structure, building  
1341 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

1342 "Construction management contract" means a contract in which a party is retained by the owner to  
1343 coordinate and administer contracts for construction services for the benefit of the owner, and may also  
1344 include, if provided in the contract, the furnishing of construction services to the owner.

1345 "Covered Institution" or "Institution" means, on and after the effective date of the initial management  
1346 agreement with the Commonwealth of Virginia, a public institution of higher education of the  
1347 Commonwealth that has entered into a management agreement with the Commonwealth to be governed  
1348 by the provisions of Subchapter 3 of the Restructuring Act.

1349 "Design-build contract" means a contract between the Institution and another party in which the party  
1350 contracting with the Institution agrees to both design and build the structure, roadway or other item

- 1351 specified in the contract.
- 1352 "Goods" means all material, equipment, supplies, and printing, including information technology and  
1353 telecommunications goods such as automated data processing hardware and software.
- 1354 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of  
1355 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or  
1356 delivery schedule for the goods, services or construction being procured.
- 1357 "Multiphase professional services contract" means a contract for the providing of professional  
1358 services where the total scope of work of the second or subsequent phase of the contract cannot be  
1359 specified without the results of the first or prior phase of the contract.
- 1360 "Nonprofessional services" means any services not specifically identified as professional services in  
1361 the definition of professional services and includes small construction projects valued not over \$1  
1362 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall  
1363 still apply to professional services for such small construction projects.
- 1364 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at  
1365 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or  
1366 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the  
1367 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who  
1368 would have been eligible and qualified to submit a bid or proposal had the contract been procured  
1369 through competitive sealed bidding or competitive negotiation.
- 1370 "Professional services" means work performed by an independent contractor within the scope of the  
1371 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,  
1372 dentistry, medicine, optometry, pharmacy or professional engineering.
- 1373 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,  
1374 post, commission, committee, institution, board or political subdivision created by law to exercise some  
1375 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
1376 activities described in these Rules.
- 1377 "Public contract" means an agreement between the Institution and a nongovernmental source that is  
1378 enforceable in a court of law.
- 1379 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform  
1380 fully the contract requirements and the moral and business integrity and reliability that will assure good  
1381 faith performance, and who has been prequalified, if required.
- 1382 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects  
1383 to the Invitation to Bid.
- 1384 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative  
1385 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
- 1386 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction  
1387 adopted by the governing body of the Covered Institution.
- 1388 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
1389 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
1390 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
1391 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
1392 established for bid opening.
- 1393 "Services" means any work performed by an independent contractor wherein the service rendered  
1394 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials  
1395 and supplies.
- 1396 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working  
1397 environment and individual goals that utilizes work experience and related services for assisting the  
1398 handicapped person to progress toward normal living and a productive vocational status.
- 1399 § 5. Methods of procurement. -
- 1400 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for  
1401 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or  
1402 competitive negotiation as provided in this section, unless otherwise authorized by law.
- 1403 B. Professional services shall be procured by competitive negotiation. Qualification-based selection  
1404 shall be used for design services.
- 1405 C. Goods, services, or insurance may be procured by competitive negotiation.
- 1406 D. Construction may be procured only by competitive sealed bidding, except that competitive  
1407 negotiation may be used in the following instances upon a determination made in advance by the  
1408 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally  
1409 advantageous to the public, which writing shall document the basis for this determination:
- 1410 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;  
1411 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or

1412 3. By the Institution for the construction of highways and any draining, dredging, excavation,  
1413 grading or similar work upon real property.

1414 E. Upon a determination in writing that there is only one source practicably available for that which  
1415 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed  
1416 bidding or competitive negotiation. The writing shall document the basis for this determination. The  
1417 Institution shall issue a written notice stating that only one source was determined to be practicably  
1418 available, and identifying that which is being procured, the contractor selected, and the date on which  
1419 the contract was or will be awarded. This notice shall be posted in a designated public area, which may  
1420 be the Department of General Services' website for the Commonwealth's central electronic procurement  
1421 system, or published in a newspaper of general circulation on the day the Institution awards or  
1422 announces its decision to award the contract, whichever occurs first. Public notice shall also be  
1423 published on the Department of General Services' website for the Commonwealth's central electronic  
1424 procurement system and may be published on other appropriate websites.

1425 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
1426 competitive negotiation; however, such procurement shall be made with such competition as is  
1427 practicable under the circumstances. A written determination of the basis for the emergency and for the  
1428 selection of the particular contractor shall be included in the contract file. The Institution shall issue a  
1429 written notice stating that the contract is being awarded on an emergency basis, and identifying that  
1430 which is being procured, the contractor selected, and the date on which the contract was or will be  
1431 awarded. This notice shall be posted in a designated public area, which may be the Department of  
1432 General Services' website for the Commonwealth's central electronic procurement system, or published  
1433 in a newspaper of general circulation on the day the Institution awards or announces its decision to  
1434 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also  
1435 be published on the Department of General Services' website for the Commonwealth's central electronic  
1436 procurement system and other appropriate websites.

1437 G. The Institution may establish purchase procedures, if adopted in writing, not requiring  
1438 competitive sealed bids or competitive negotiation for single or term contracts for goods and services  
1439 other than professional services if the aggregate or the sum of all phases is not expected to exceed  
1440 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

1441 H. The Institution may establish purchase procedures, if adopted in writing, not requiring  
1442 competitive negotiation for single or term contracts for professional services if the aggregate or the sum  
1443 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide  
1444 for competition wherever practicable.

1445 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase  
1446 of goods, products or commodities from a public auction sale is in the best interests of the public, such  
1447 items may be purchased at the auction, including online public auctions. The writing shall document the  
1448 basis for this determination.

1449 J. The purchase of goods or nonprofessional services, but not construction or professional services,  
1450 may be made by reverse auctioning.

1451 § 6. Cooperative procurement. -

1452 A. In circumstances where the Institution determines and documents that statewide contracts for  
1453 goods and services, including information technology and telecommunications goods and services, do not  
1454 provide goods and services to the Institution that meet its business goals and objectives, the Institution is  
1455 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on  
1456 behalf of or in conjunction with public bodies, public or private health or educational institutions, other  
1457 public or private organizations or entities, including public-private partnerships, charitable organizations,  
1458 health care provider alliances or purchasing organizations or entities, or with public agencies or  
1459 institutions or group purchasing organizations of the several states, territories of the United States, or the  
1460 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce  
1461 administrative expense in any acquisition of goods and services, other than professional services. The  
1462 Institution may purchase from any authority, department, agency, institution, city, county, town, or other  
1463 political subdivision of the Commonwealth's contract even if it did not participate in the request for  
1464 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the  
1465 procurement was being conducted on behalf of other public bodies. In such instances, deviation from  
1466 the procurement procedures set forth in these Rules and the administrative policies and procedures  
1467 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of  
1468 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic  
1469 procurement system, including the requirement for payment of applicable fees. Nothing herein shall  
1470 prohibit the payment by direct or indirect means of any administrative fee that will allow for  
1471 participation in any such arrangement.

1472 B. In circumstances where statewide contracts for goods and services, including information  
1473 technology and telecommunications goods and services, do not provide goods and services to meet the

1474 Institution's business goals and objectives, and as authorized by the United States Congress and  
 1475 consistent with applicable federal regulations, and provided the terms of the contract permit such  
 1476 purchases:

1477 1. The Institution may purchase goods and nonprofessional services, from a United States General  
 1478 Services Administration contract or a contract awarded by any other agency of the United States  
 1479 government; and

1480 2. The Institution may purchase telecommunications and information technology goods and  
 1481 nonprofessional services from a United States General Services Administration contract or a contract  
 1482 awarded by any other agency of the United States government.

1483 § 7. Design-build or construction management contracts authorized. -

1484 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed  
 1485 price design-build basis or construction management basis in accordance with the provisions of this  
 1486 section.

1487 B. Procurement of construction by the design-build or construction management method shall be a  
 1488 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their  
 1489 qualifications. Based upon the information submitted and any other relevant information which the  
 1490 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be  
 1491 selected by the Commonwealth and requested to submit proposals.

1492 § 8. Modification of the contract. -

1493 A. A contract awarded by the Institution may include provisions for modification of the contract  
 1494 during performance, but no fixed-price contract may be increased by more than 25% of the amount of  
 1495 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's  
 1496 president or his designee. In no event may the amount of any contract, without adequate consideration,  
 1497 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of  
 1498 an error in its bid or offer.

1499 B. The Institution may extend the term of an existing contract for services to allow completion of  
 1500 any work undertaken but not completed during the original term of the contract.

1501 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract  
 1502 modifications.

1503 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

1504 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
 1505 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis  
 1506 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the  
 1507 Institution shall include businesses selected from a list made available by the Department of Minority  
 1508 Business Enterprise.

1509 B. The Institution shall establish programs consistent with this section to facilitate the participation  
 1510 of small businesses and businesses owned by women and minorities in procurement transactions. The  
 1511 programs established shall be in writing and shall include cooperation with the Department of Minority  
 1512 Business Enterprise, the United States Small Business Administration, and other public or private  
 1513 agencies. The Institution shall submit annual progress reports on minority business procurement to the  
 1514 Department of Minority Business Enterprise.

1515 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
 1516 analysis that documents a statistically significant disparity between the availability and utilization of  
 1517 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require  
 1518 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing  
 1519 law.

1520 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
 1521 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination  
 1522 that employing ex-offenders on the specific contract is not in its best interest.

1523 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

1524 The Institution shall include in every contract of more than \$10,000 the following provisions:

1525 1. During the performance of this contract, the contractor agrees as follows:

1526 a. The contractor will not discriminate against any employee or applicant for employment because of  
 1527 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to  
 1528 discrimination in employment, except where there is a bona fide occupational qualification reasonably  
 1529 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places,  
 1530 available to employees and applicants for employment, notices setting forth the provisions of this  
 1531 nondiscrimination clause.

1532 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the  
 1533 contractor, will state that such contractor is an equal opportunity employer.

1534 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation

1535 shall be deemed sufficient for the purpose of meeting the requirements of this section.

1536 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every  
1537 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
1538 subcontractor or vendor.

1539 § 11. Drug-free workplace to be maintained by contractor; required contract provisions.-

1540 The Institution shall include in every contract over \$10,000 the following provisions:

1541 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace  
1542 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for  
1543 employment, a statement notifying employees that the unlawful manufacture, sale, distribution,  
1544 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's  
1545 workplace and specifying the actions that will be taken against employees for violations of such  
1546 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the  
1547 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the  
1548 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be  
1549 binding upon each subcontractor or vendor.

1550 For the purposes of this section, "drug-free workplace" means a site for the performance of work  
1551 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the  
1552 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,  
1553 dispensation, possession or use of any controlled substance or marijuana during the performance of the  
1554 contract.

1555 § 12. Use of brand names. -

1556 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or  
1557 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be  
1558 deemed to convey the general style, type, character, and quality of the article desired. Any article that  
1559 the Institution in its sole discretion determines to be the equal of that specified, considering quality,  
1560 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

1561 § 13. Comments concerning specifications. -

1562 The Institution shall establish procedures whereby comments concerning specifications or other  
1563 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the  
1564 time set for receipt of bids or proposals or award of the contract.

1565 § 14. Prequalification generally; prequalification for construction. -

1566 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or  
1567 construction, and consideration of bids or proposals limited to prequalified contractors. Any  
1568 prequalification procedure shall be established in writing and sufficiently in advance of its  
1569 implementation to allow potential contractors a fair opportunity to complete the process.

1570 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant  
1571 to a prequalification process for construction projects adopted by the Institution. The process shall be  
1572 consistent with the provisions of this section.

1573 The application form used in such process shall set forth the criteria upon which the qualifications of  
1574 prospective contractors will be evaluated. The application form shall request of prospective contractors  
1575 only such information as is appropriate for an objective evaluation of all prospective contractors  
1576 pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to  
1577 request, by checking the appropriate box, that all information voluntarily submitted by the contractor  
1578 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the  
1579 provisions of subsection D of § 34 of these Rules.

1580 In all instances in which the Institution requires prequalification of potential contractors for  
1581 construction projects, advance notice shall be given of the deadline for the submission of  
1582 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set  
1583 for the submission of bids for such construction so as to allow the procedures set forth in this subsection  
1584 to be accomplished.

1585 At least 30 days prior to the date established for submission of bids or proposals under the  
1586 procurement of the contract for which the prequalification applies, the Institution shall advise in writing  
1587 each contractor who submitted an application whether that contractor has been prequalified. In the event  
1588 that a contractor is denied prequalification, the written notification to the contractor shall state the  
1589 reasons for the denial of prequalification and the factual basis of such reasons.

1590 A decision by the Institution denying prequalification under the provisions of this subsection shall be  
1591 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

1592 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the  
1593 following:

1594 1. The contractor does not have sufficient financial ability to perform the contract that would result  
1595 from such procurement. If a bond is required to ensure performance of a contract, evidence that the  
1596 contractor can acquire a surety bond from a corporation included on the United States Treasury list of

1597 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to  
 1598 establish the financial ability of the contractor to perform the contract resulting from such procurement;

1599 2. The contractor does not have appropriate experience to perform the construction project in  
 1600 question;

1601 3. The contractor or any officer, director or owner thereof has had judgments entered against him  
 1602 within the past 10 years for the breach of contracts for governmental or nongovernmental construction,  
 1603 including, but not limited to, design-build or construction management;

1604 4. The contractor has been in substantial noncompliance with the terms and conditions of prior  
 1605 construction contracts with the Institution without good cause. If the Institution has not contracted with a  
 1606 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor  
 1607 has been in substantial noncompliance with the terms and conditions of comparable construction  
 1608 contracts with another public body without good cause. The Institution may not utilize this provision to  
 1609 deny prequalification unless the facts underlying such substantial noncompliance were documented in  
 1610 writing in the prior construction project file and such information relating thereto given to the contractor  
 1611 at that time, with the opportunity to respond;

1612 5. The contractor or any officer, director, owner, project manager, procurement manager or chief  
 1613 financial official thereof has been convicted within the past 10 years of a crime related to governmental  
 1614 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6  
 1615 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental  
 1616 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  
 1617 substantially similar law of the United States or another state;

1618 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an  
 1619 established debarment procedure from bidding or contracting by any public body, agency of another  
 1620 state or agency of the federal government; and

1621 7. The contractor failed to provide to the Institution in a timely manner any information requested  
 1622 by the Institution relevant to subdivisions 1 through 6 of this subsection.

1623 § 15. Negotiation with lowest responsible bidder. -

1624 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as  
 1625 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the  
 1626 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds.  
 1627 However, the negotiation may be undertaken only under conditions and procedures described in writing  
 1628 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

1629 § 16. Cancellation, rejection of bids; waiver of informalities. -

1630 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or  
 1631 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of  
 1632 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,  
 1633 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a  
 1634 particular responsive and responsible bidder or offeror.

1635 B. The Institution may waive informalities in bids.

1636 § 17. Exclusion of insurance bids prohibited. -

1637 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance  
 1638 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be  
 1639 excluded from presenting an insurance bid proposal to the Institution in response to a request for  
 1640 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a  
 1641 prospective insurer pursuant to § 18.

1642 § 18. Debarment. -

1643 Prospective contractors may be debarred from contracting for particular types of supplies, services,  
 1644 insurance or construction, for specified periods of time. Any debarment procedure shall be established in  
 1645 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a  
 1646 contractor's unsatisfactory performance for the Institution.

1647 § 19. Purchase programs for recycled goods; Institution responsibilities. -

1648 A. The Institution may implement a purchase program for recycled goods and may coordinate its  
 1649 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and  
 1650 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

1651 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets  
 1652 Development Council, shall advise the Institution concerning the designation of recycled goods.

1653 § 20. Preference for Virginia products with recycled content and for Virginia firms. -

1654 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or  
 1655 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be  
 1656 decided by lot.

1657 B. Whenever any bidder is a resident of any other state and such state under its laws allows a

1658 resident contractor of that state a preference, a like preference may be allowed by the Institution to the  
1659 lowest responsive and responsible bidder who is a resident of Virginia.

1660 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where  
1661 goods are being offered, and existing price preferences have already been taken into account, preference  
1662 shall be given to the bidder whose goods contain the greatest amount of recycled content.

1663 § 21. Preference for Virginia coal used in the Institution. -

1664 In determining the award of any contract for coal to be purchased for use in the Institution with state  
1665 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest  
1666 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more  
1667 than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined  
1668 elsewhere.

1669 § 22. Preference for recycled paper and paper products used by the Institution. -

1670 A. In determining the award of any contract for paper and paper products to be purchased for use  
1671 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable  
1672 for the purpose intended, so long as the price is not more than 10% greater than the price of the low  
1673 responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

1674 B. For purposes of this section, recycled paper and paper products means any paper or paper  
1675 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

1676 § 23. Withdrawal of bid due to error. -

1677 A. A bidder for a public construction contract, other than a contract for construction or maintenance  
1678 of public highways, may withdraw his bid from consideration if the price bid was substantially lower  
1679 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and  
1680 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an  
1681 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made  
1682 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can  
1683 be clearly shown by objective evidence drawn from inspection of original work papers, documents and  
1684 materials used in the preparation of the bid sought to be withdrawn.

1685 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from  
1686 consideration if the price bid would have been substantially lower than the other bids due solely to the  
1687 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of  
1688 work, labor or material made directly in the compilation of a bid that shall be clearly shown by  
1689 objective evidence drawn from inspection of original work papers, documents and materials used in the  
1690 preparation of the bid sought to be withdrawn.

1691 One of the following procedures for withdrawal of a bid shall be selected by the Institution and  
1692 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to  
1693 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall  
1694 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or  
1695 designated official his original work papers, documents and materials used in the preparation of the bid  
1696 within one day after the date fixed for submission of bids. The work papers shall be delivered by the  
1697 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either  
1698 instance, the work papers, documents and materials may be considered as trade secrets or proprietary  
1699 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened  
1700 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder  
1701 shall have two hours after the opening of bids within which to claim in writing any mistake as defined  
1702 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour  
1703 period has elapsed. The mistake shall be proved only from the original work papers, documents and  
1704 materials delivered as required herein.

1705 B. The Institution may establish procedures for the withdrawal of bids for other than construction  
1706 contracts.

1707 C. No bid shall be withdrawn under this section when the result would be the awarding of the  
1708 contract on another bid of the same bidder or of another bidder in which the ownership of the  
1709 withdrawing bidder is more than 5%.

1710 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed  
1711 to be the low bid.

1712 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or  
1713 labor to or perform any subcontract or other work agreement for the person or firm to whom the  
1714 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for  
1715 which the withdrawn bid was submitted.

1716 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify  
1717 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid  
1718 price, provided such bidder is a responsible and responsive bidder.

1719 § 24. Contract Pricing Arrangements. -

1720 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other  
1721 basis that is not prohibited by these Rules.

1722 B. Except in case of emergency affecting the public health, safety or welfare, no public contract  
1723 shall be awarded on the basis of cost plus a percentage of cost.

1724 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis  
1725 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole  
1726 or part as a percentage of such claims, shall not be prohibited by this section.

1727 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

1728 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has  
1729 obtained, and continues to maintain for the duration of the work, workers' compensation coverage  
1730 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of  
1731 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,  
1732 evidence of such coverage.

1733 B. The Department of General Services shall provide the form to the Institution. Failure of the  
1734 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)  
1735 of subsection A.

1736 C. No subcontractor shall perform any work on a construction project of the Institution unless he  
1737 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage  
1738 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of  
1739 Virginia.

1740 § 26. Retainage on construction contracts. -

1741 A. In any contract issued by the Institution for construction that provides for progress payments in  
1742 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%  
1743 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful  
1744 performance of the contract. All amounts withheld may be included in the final payment.

1745 B. Any subcontract for a public project that provides for similar progress payments shall be subject  
1746 to the provisions of this section.

1747 § 27. Public construction contract provisions barring damages for unreasonable delays declared void.

1748 -

1749 A. Any provision contained in any public construction contract of the Institution that purports to  
1750 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable  
1751 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the  
1752 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to  
1753 causes within their control shall be void and unenforceable as against public policy.

1754 B. Subsection A shall not be construed to render void any provision of a public construction  
1755 contract awarded by the Institution that:

1756 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the  
1757 contractor, or its subcontractors, agents or employees;

1758 2. Requires notice of any delay by the party claiming the delay;

1759 3. Provides for liquidated damages for delay; or

1760 4. Provides for arbitration or any other procedure designed to settle contract disputes.

1761 C. A contractor making a claim against the Institution for costs or damages due to the alleged  
1762 delaying of the contractor in the performance of its work under any public construction contract of the  
1763 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the  
1764 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage  
1765 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation  
1766 or arbitration to be false or to have no basis in law or in fact.

1767 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of  
1768 the contractor in the performance of work under any public construction contract for the Institution, it  
1769 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to  
1770 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution  
1771 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is  
1772 determined through litigation or arbitration to have been made in bad faith.

1773 § 28. Bid bonds. -

1774 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1  
1775 million shall be accompanied by a bid bond from a surety company selected by the bidder that is  
1776 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will  
1777 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed  
1778 5% of the amount bid.

1779 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for  
1780 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

1781 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids  
1782 or proposals for construction contracts anticipated to be less than \$1 million.

1783 § 29. Performance and payment bonds. -

1784 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million  
1785 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to  
1786 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,  
1787 structures or other improvements to real property owned by the Institution, the contractor shall furnish to  
1788 the Institution the following bonds:

1789 1. Except for transportation-related projects, a performance bond in the sum of the contract amount  
1790 conditioned upon the faithful performance of the contract in strict conformity with the plans,  
1791 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a  
1792 form and amount satisfactory to the Institution.

1793 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of  
1794 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom  
1795 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the  
1796 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied  
1797 or performed in the furtherance of the work.

1798 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but  
1799 only for periods when the equipment rented is actually used at the site.

1800 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor  
1801 that are authorized to do business in Virginia.

1802 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

1803 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

1804 E. Nothing in this section shall preclude the Institution from requiring payment or performance  
1805 bonds for construction contracts below \$1 million.

1806 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish  
1807 a payment bond with surety thereon in the sum of the full amount of the contract with such  
1808 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are  
1809 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the  
1810 work provided for in the subcontract.

1811 § 30. Alternative forms of security. -

1812 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash  
1813 escrow in the face amount required for the bond.

1814 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the  
1815 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain  
1816 designated funds in the face amount required for the bid, payment or performance bond. Approval shall  
1817 be granted only upon a determination that the alternative form of security proffered affords protection to  
1818 the Institution equivalent to a corporate surety's bond.

1819 § 31. Bonds on other than construction contracts. -

1820 The Institution may require bid, payment, or performance bonds for contracts for goods or services if  
1821 provided in the Invitation to Bid or Request for Proposal.

1822 § 32. Action on performance bond. -

1823 No action against the surety on a performance bond shall be brought by the Institution unless  
1824 brought within one year after (i) completion of the contract, including the expiration of all warranties  
1825 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

1826 § 33. Actions on payment bonds; waiver of right to sue. -

1827 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished  
1828 material in accordance with the contract documents in furtherance of the work provided in any contract  
1829 for which a payment bond has been given, and who has not been paid in full before the expiration of 90  
1830 days after the day on which the claimant performed the last of the labor or furnished the last of the  
1831 materials for which he claims payment, may bring an action on the payment bond to recover any  
1832 amount due him for the labor or material. The obligee named in the bond need not be named a party to  
1833 the action.

1834 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no  
1835 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's  
1836 payment bond only if he has given written notice to the contractor within 180 days from the day on  
1837 which the claimant performed the last of the labor or furnished the last of the materials for which he  
1838 claims payment, stating with substantial accuracy the amount claimed and the name of the person for  
1839 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be  
1840 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at  
1841 any place where his office is regularly maintained for the transaction of business. Claims for sums  
1842 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the

1843 time limitations stated in this subsection.

1844 C. Any action on a payment bond shall be brought within one year after the day on which the  
1845 person bringing such action last performed labor or last furnished or supplied materials.

1846 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless  
1847 it is in writing, signed by the person whose right is waived, and executed after such person has  
1848 performed labor or furnished material in accordance with the contract documents.

1849 § 34. Public inspection of certain records. -

1850 A. Except as provided in this section, all proceedings, records, contracts and other public records  
1851 relating to procurement transactions shall be open to the inspection of any citizen, or any interested  
1852 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et  
1853 seq.).

1854 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution  
1855 shall not be open to public inspection.

1856 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect  
1857 bid records within a reasonable time after the opening of all bids but prior to award, except in the event  
1858 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid  
1859 records shall be open to public inspection only after award of the contract.

1860 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect  
1861 proposal records within a reasonable time after the evaluation and negotiations of proposals are  
1862 completed but prior to award, except in the event that the Institution decides not to accept any of the  
1863 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection  
1864 only after award of the contract.

1865 E. Any inspection of procurement transaction records under this section shall be subject to  
1866 reasonable restrictions to ensure the security and integrity of the records.

1867 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection  
1868 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14  
1869 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the  
1870 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission  
1871 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the  
1872 reasons why protection is necessary.

1873 § 35. Exemption for certain transactions. -

1874 A. The provisions of these Rules shall not apply to:

1875 1. The selection of services related to the management and investment of the Institution's endowment  
1876 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be  
1877 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by  
1878 § 23-76.1.

1879 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the  
1880 Institution. However, such purchase procedures shall provide for competition where practicable.

1881 3. Procurement of any construction or planning and design services for construction by the  
1882 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
1883 obligated to conform to procurement procedures that are established by federal statutes or regulations,  
1884 whether or not those federal procedures are in conformance with the provisions of these Rules.

1885 4. The University of Virginia Medical Center.

1886 5. The purchase of goods and services by the Institution when such purchases are made under a  
1887 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

1888 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
1889 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
1890 regulations not in conformance with the provisions of these Rules, the Institution may comply with such  
1891 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination  
1892 of the Institution's President or his designee that acceptance of the grant or contract funds under the  
1893 applicable conditions is in the public interest. Such determination shall state the specific provision of  
1894 these Rules in conflict with the conditions of the grant or contract.

1895 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

1896 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into  
1897 contracts with faith-based organizations for the purposes described in this section on the same basis as  
1898 any other nongovernmental source without impairing the religious character of such organization, and  
1899 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

1900 B. For the purposes of this section, "faith-based organization" means a religious organization that is  
1901 or applies to be a contractor to provide goods or services for programs funded by the block grant  
1902 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
1903 104-193.

1904 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this  
 1905 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's  
 1906 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based  
 1907 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of  
 1908 religious freedom by the recipients of such goods, services, or disbursements.

1909 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
 1910 purchase orders prominently display a nondiscrimination statement indicating that it does not  
 1911 discriminate against faith-based organizations.

1912 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any  
 1913 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on  
 1914 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on  
 1915 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other  
 1916 organizations that contract with public bodies to account for the use of the funds provided; however, if  
 1917 the faith-based organization segregates public funds into separate accounts, only the accounts and  
 1918 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii)  
 1919 shall be construed to supercede or otherwise override any other applicable state law.

1920 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,  
 1921 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent  
 1922 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to  
 1923 expenditures pursuant to contracts, if any, for the services of chaplains.

1924 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization  
 1925 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based  
 1926 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of  
 1927 a particular religion.

1928 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant  
 1929 to a contract between the Institution and a faith-based organization, objects to the religious character of  
 1930 the faith-based organization from which the individual receives or would receive the goods, services, or  
 1931 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date  
 1932 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

1933 The Institution shall provide to each individual who applies for or receives goods, services, or  
 1934 disbursements provided pursuant to a contract between the Institution and a faith-based organization a  
 1935 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based  
 1936 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's  
 1937 charitable or religious character, practices, or expression. No provider of services may discriminate  
 1938 against you on the basis of religion, a religious belief, or your refusal to actively participate in a  
 1939 religious practice. If you object to a particular provider because of its religious character, you may  
 1940 request assignment to a different provider. If you believe that your rights have been violated, please  
 1941 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

1942 § 37. Exemptions from competition for certain transactions. -

1943 The Institution may enter into contracts without competition, as that term is described in subsections  
 1944 A through J of § 5 (Methods of procurement) of these Rules, for:

1945 1. The purchase of goods or services that are produced or performed by or related to:

1946 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the  
 1947 Blind and Vision Impaired;

1948 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported  
 1949 employment services serving the handicapped;

1950 c. Private educational institutions; or

1951 d. Other public educational institutions.

1952 2. Speakers and performing artists;

1953 3. Memberships and Association dues;

1954 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of  
 1955 goods or services by the Institution;

1956 5. Group travel in foreign countries;

1957 6. Conference facilities and services;

1958 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,  
 1959 registration and tournament fees;

1960 8. Royalties; or

1961 9. The purchase of legal services, provided that the Office of the Attorney General has been  
 1962 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

1963 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain  
 1964 transactions; limitations. -

1965 The Institution may enter into contracts for insurance or electric utility service without competitive

1966 sealed bidding or competitive negotiation if purchased through an association of which the Institution is  
 1967 a member if the association was formed and is maintained for the purpose of promoting the interest and  
 1968 welfare of and developing close relationships with similar public bodies, provided such association has  
 1969 procured the insurance or electric utility services by use of competitive principles and provided that the  
 1970 Institution has made a determination in advance after reasonable notice to the public and set forth in  
 1971 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the  
 1972 public. The writing shall document the basis for this determination.

1973 § 39. Definitions. -

1974 As used in §§ 39 through 46, unless the context requires a different meaning:

1975 "Contractor" means the entity that has a direct contract with the Institution.

1976 "Debtor" means any individual, business, or group having a delinquent debt or account with any state  
 1977 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

1978 "Payment date" means either (i) the date on which payment is due under the terms of a contract for  
 1979 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after  
 1980 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or  
 1981 services by the Institution.

1982 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to  
 1983 whom the contract was awarded or to any subcontractor in the performance of the work provided for in  
 1984 such contract.

1985 § 40. Exemptions. -

1986 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any  
 1987 public utility tariffs prescribed by the State Corporation Commission.

1988 § 41. Retainage to remain valid. -

1989 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall  
 1990 remain valid.

1991 § 42. Prompt payment of bills by the Institution. -

1992 A. The Institution shall promptly pay for the completely delivered goods or services by the required  
 1993 payment date.

1994 Payment shall be deemed to have been made when offset proceedings have been instituted, as  
 1995 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

1996 B. Separate payment dates may be specified for contracts under which goods or services are  
 1997 provided in a series of partial deliveries or executions to the extent that such contract provides for  
 1998 separate payment for such partial delivery or execution.

1999 § 43. Defect or impropriety in the invoice or goods and/or services received. -

2000 In instances where there is a defect or impropriety in an invoice or in the goods or services received,  
 2001 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would  
 2002 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the  
 2003 invoice or the goods or services.

2004 § 44. Date of postmark deemed to be date payment is made. -

2005 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date  
 2006 payment is made for purposes of these Rules.

2007 § 45. Payment clauses to be included in contracts. -

2008 Any contract awarded by the Institution shall include:

2009 1. A payment clause that obligates the contractor to take one of the two following actions within  
 2010 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the  
 2011 subcontractor under that contract:

2012 a. Pay the subcontractor for the proportionate share of the total payment received from the  
 2013 Institution attributable to the work performed by the subcontractor under that contract; or

2014 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the  
 2015 subcontractor's payment with the reason for nonpayment.

2016 2. A payment clause that requires (i) individual contractors to provide their social security numbers  
 2017 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification  
 2018 numbers.

2019 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts  
 2020 owed by the contractor that remain unpaid after seven days following receipt by the contractor of  
 2021 payment from the Institution for work performed by the subcontractor under that contract, except for  
 2022 amounts withheld as allowed in subdivision 1.

2023 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,  
 2024 interest shall accrue at the rate of 1% per month."

2025 Any such contract awarded shall further require the contractor to include in each of its subcontracts a  
 2026 provision requiring each subcontractor to include or otherwise be subject to the same payment and

2027 interest requirements with respect to each lower-tier subcontractor.

2028 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause  
2029 in this section shall not be construed to be an obligation of the Institution. A contract modification shall  
2030 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement  
2031 claim shall not include any amount for reimbursement for the interest charge.

2032 § 46. Interest penalty; exceptions. -

2033 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the  
2034 Institution to a vendor that remain unpaid after seven days following the payment date. However,  
2035 nothing in this section shall affect any contract providing for a different rate of interest, or for the  
2036 payment of interest in a different manner.

2037 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on  
2038 corporate loans (prime rate) at large United States money center commercial banks as reported daily in  
2039 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of  
2040 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of  
2041 interest established pursuant to § 58.1-1812 of the Code of Virginia.

2042 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed  
2043 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of  
2044 delivery of goods or services or the accuracy of any invoice received for the goods or services. The  
2045 exception from the interest penalty provided by this subsection shall apply only to that portion of a  
2046 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of  
2047 the disagreement.

2048 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the  
2049 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a  
2050 contractor from receiving interest on such funds under an approved escrow agreement.

2051 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or  
2052 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the  
2053 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the  
2054 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is  
2055 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue  
2056 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days  
2057 following the payment date.

2058 § 47. Ineligibility. -

2059 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from  
2060 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the  
2061 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the  
2062 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,  
2063 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so  
2064 requested by the bidder within five business days after receipt of the notice.

2065 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
2066 challenging the evaluation. The Institution shall issue its written determination of disqualification or  
2067 ineligibility based on all information in the possession of the Institution, including any rebuttal  
2068 information, within five business days of the date the Institution received such rebuttal information.

2069 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to  
2070 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the  
2071 evaluation reveals that the bidder should be refused permission to participate, or disqualified from  
2072 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The  
2073 notice shall state the basis for the determination, which shall be final unless the bidder appeals the  
2074 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the  
2075 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided  
2076 in § 54.

2077 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in  
2078 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be  
2079 restoration of eligibility.

2080 § 48. Appeal of denial of withdrawal of bid. -

2081 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final  
2082 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by  
2083 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by  
2084 instituting legal action as provided in § 54.

2085 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,  
2086 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the  
2087 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released  
2088 only upon a final determination that the bidder was entitled to withdraw the bid.

2089 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an  
 2090 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the  
 2091 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to  
 2092 Bid, the sole relief shall be withdrawal of the bid.

2093 § 49. Determination of nonresponsibility. -

2094 A. Following public opening and announcement of bids received on an Invitation to Bid, the  
 2095 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed  
 2096 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent  
 2097 low bidder is responsible. If the Institution so determines, then it may proceed with an award in  
 2098 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution  
 2099 determines that the apparent low bidder is not responsible, it shall proceed as follows:

2100 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify  
 2101 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for  
 2102 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that  
 2103 relate to the determination, if so requested by the bidder within five business days after receipt of the  
 2104 notice.

2105 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
 2106 challenging the evaluation. The Institution shall issue its written determination of responsibility based  
 2107 on all information in the possession of the Institution, including any rebuttal information, within five  
 2108 business days of the date the Institution received the rebuttal information. At the same time, the  
 2109 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

2110 3. Such notice shall state the basis for the determination, which shall be final unless the bidder  
 2111 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures  
 2112 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action  
 2113 as provided in § 54.

2114 The provisions of this subsection shall not apply to procurements involving the prequalification of  
 2115 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such  
 2116 bidders are not responsible.

2117 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the  
 2118 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in  
 2119 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or  
 2120 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the  
 2121 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or  
 2122 directed award as provided in subsection A of § 54, or both.

2123 If it is determined that the decision of the Institution was not an honest exercise of discretion, but  
 2124 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state  
 2125 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has  
 2126 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

2127 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract  
 2128 shall proceed under this section, and may not protest the award or proposed award under the provisions  
 2129 of § 50 of these Rules.

2130 D. Nothing contained in this section shall be construed to require the Institution, when procuring by  
 2131 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed  
 2132 to be the most advantageous.

2133 § 50. Protest of award or decision to award. -

2134 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall  
 2135 submit the protest in writing to the Institution, or an official designated by the Institution, no later than  
 2136 10 days after the award or the announcement of the decision to award, whichever occurs first. Public  
 2137 notice of the award or the announcement of the decision to award shall be given by the Institution in  
 2138 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any  
 2139 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to  
 2140 protest the award or decision to award such contract shall submit the protest in the same manner no  
 2141 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these  
 2142 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part  
 2143 upon information contained in public records pertaining to the procurement transaction that are subject  
 2144 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall  
 2145 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at  
 2146 such later time as provided in this section. No protest shall lie for a claim that the selected bidder or  
 2147 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest  
 2148 and the relief sought. The Institution or designated official shall issue a decision in writing within 10  
 2149 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror

2150 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting  
2151 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as  
2152 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the  
2153 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of  
2154 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the  
2155 standards of § 55 of these Rules.

2156 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the  
2157 sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it  
2158 to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or  
2159 capricious, then the sole relief shall be as hereinafter provided.

2160 Where the award has been made but performance has not begun, the performance of the contract  
2161 may be enjoined. Where the award has been made and performance has begun, the Institution may  
2162 declare the contract void upon a finding that this action is in the best interest of the public. Where a  
2163 contract is declared void, the performing contractor shall be compensated for the cost of performance up  
2164 to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

2165 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing  
2166 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to  
2167 award was based on fraud or corruption or on an act in violation of these Rules, the Institution,  
2168 designated official or appeals board may enjoin the award of the contract to a particular bidder.

2169 § 51. Effect of appeal upon contract. -

2170 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in  
2171 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has  
2172 been filed.

2173 § 52. Stay of award during protest. -

2174 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event  
2175 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided  
2176 in § 54, no further action to award the contract shall be taken unless there is a written determination that  
2177 proceeding without delay is necessary to protect the public interest or unless the bid or offer would  
2178 expire.

2179 § 53. Contractual disputes. -

2180 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than  
2181 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be  
2182 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing  
2183 herein shall preclude a contract from requiring submission of an invoice for final payment within a  
2184 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of  
2185 claims shall not delay payment of amounts agreed due in the final payment.

2186 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.  
2187 Such procedure, which may be contained in the contract or may be specifically incorporated into the  
2188 contract by reference and made available to the contractor, shall establish a time limit for a final  
2189 decision in writing by the Institution. If the Institution has established administrative procedures meeting  
2190 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically  
2191 incorporated in the contract by reference and made available to the contractor. The Institution may  
2192 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution  
2193 (ADR) as an administrative procedure.

2194 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these  
2195 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's  
2196 decision on the claim, unless the Institution fails to render such decision within the time specified in the  
2197 contract.

2198 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within  
2199 six months of the date of the final decision on the claim by the Institution by invoking administrative  
2200 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting  
2201 legal action as provided in § 54.

2202 § 54. Legal actions. -

2203 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from  
2204 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder  
2205 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that  
2206 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest  
2207 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of  
2208 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in  
2209 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in  
2210 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously  
2211 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a

2212 responsible bidder, the court may direct the Institution to award the contract to such bidder in  
2213 accordance with the requirements of this section and the Invitation to Bid.

2214 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the  
2215 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes  
2216 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary  
2217 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,  
2218 or the terms or conditions of the Invitation to Bid.

2219 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole  
2220 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or  
2221 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit  
2222 court challenging a proposed award or the award of a contract, which shall be reversed only if the  
2223 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but  
2224 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state  
2225 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

2226 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting  
2227 of reasonable security to protect the Institution.

2228 E. A contractor may bring an action involving a contract dispute with the Institution in the  
2229 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be  
2230 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of  
2231 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of  
2232 Accounts.

2233 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of  
2234 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,  
2235 the procedures shall be exhausted prior to instituting legal action concerning the same procurement  
2236 transaction unless the Institution agrees otherwise.

2237 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a  
2238 contractor.

2239 § 55. Administrative appeals procedure. -

2240 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to  
2241 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from  
2242 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes  
2243 arising during the performance of a contract, or (v) any of these. Such administrative procedure may  
2244 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a  
2245 disinterested person or panel, the opportunity to present pertinent information and the issuance of a  
2246 written decision containing findings of fact. The disinterested person or panel shall not be an employee  
2247 of the governmental entity against whom the claim has been filed. The findings of fact shall be final  
2248 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b)  
2249 so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings  
2250 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these  
2251 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a  
2252 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution  
2253 Council in establishing an Alternative Dispute Resolution (ADR) procedure.

2254 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute  
2255 judicial review if such action is brought within 30 days of receipt of the written decision.

2256 § 56. Alternative dispute resolution. -

2257 The Institution may enter into agreements to submit disputes arising from contracts entered into  
2258 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution  
2259 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of  
2260 Virginia, as applicable.

2261 § 57. Ethics in public contracting. -

2262 The Institution and its governing body, officers and employees shall be governed by the Ethics in  
2263 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of  
2264 Chapter 43 of Title 2.2 of the Code of Virginia.

2265 EXHIBIT K

2266

2267 MANAGEMENT AGREEMENT

2268 BETWEEN

2269 THE COMMONWEALTH OF VIRGINIA

2270 AND

2271 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

2272 AND

2273 THE VIRGINIA INSTITUTE OF MARINE SCIENCE  
 2274 PURSUANT TO  
 2275 THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE  
 2276 OPERATIONS ACT OF 2005

2277  
 2278 POLICY GOVERNING  
 2279 HUMAN RESOURCES FOR  
 2280 PARTICIPATING COVERED EMPLOYEES  
 2281 AND OTHER COLLEGE EMPLOYEES

2282  
 2283 THE RECTOR AND VISITORS OF  
 2284 THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
 2285 POLICY GOVERNING HUMAN RESOURCES FOR  
 2286 PARTICIPATING COVERED EMPLOYEES  
 2287 AND OTHER COLLEGE EMPLOYEES

2288 I. PREAMBLE.

2289 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter  
 2290 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of  
 2291 higher education of the Commonwealth of Virginia and provides that upon becoming a Covered  
 2292 Institution, the College of William and Mary in Virginia shall have responsibility and accountability for  
 2293 human resources management for all College employees, defined in the Act as "Covered Employees,"  
 2294 who pursuant to subsection A of § 23-38.114 of the Act, "are state employees of" the College.  
 2295 Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with  
 2296 the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel  
 2297 Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the  
 2298 policies and procedures prescribed by the Virginia Department of Human Resource Management,  
 2299 provided that they may subsequently elect to become Participating Covered Employees. All Participating  
 2300 Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et  
 2301 seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the  
 2302 Virginia Personnel Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were subject to the  
 2303 state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is  
 2304 subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are  
 2305 based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in  
 2306 either state- or College-sponsored benefit plans as described by the Management Agreement.

2307 The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law  
 2308 and constitute the human resources policies to be included in any human resources system adopted by  
 2309 the College for its employees.

2310 This Policy is intended to cover the authority that may be granted to the College pursuant to  
 2311 Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the  
 2312 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act  
 2313 and the College's Enabling Legislation, are not affected by this Policy.

2314 II. DEFINITIONS.

2315 As used in this policy, the following terms shall have the following meanings, unless the context  
 2316 requires otherwise:

2317 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
 2318 Chapter 4.10 of Title 23 of the Code of Virginia.

2319 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William  
 2320 and Mary and the Virginia Institute of Marine Science.

2321 "Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29  
 2322 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by  
 2323 the Virginia Department of Human Resource Management and who are not Participating Covered  
 2324 Employees.

2325 "College" means the College of William and Mary in Virginia, formerly known as (State Agency  
 2326 204) and the Virginia Institute of Marine Science, formerly known as (State Agency 268).

2327 "College employee" means a Covered Employee.

2328 "College Human Resources System" means the human resources system for College employees as  
 2329 provided for herein.

2330 "Covered Employee" means any person who is employed by the College on either a salaried or  
 2331 nonsalaried (wage) basis.

2332 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement  
 2333 with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that  
 2334 has entered into a Management Agreement with the Commonwealth to be governed by the provisions of

2335 Subchapter 3 of the Act.

2336 "Employee" means Covered Employee unless the context clearly indicates otherwise.

2337 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
2338 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions  
2339 of the College.

2340 "Effective Date" means the effective date of the initial Management Agreement between the College  
2341 and the Commonwealth.

2342 "Governing Law" means the Act and the College's Enabling Legislation.

2343 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act  
2344 between the College and the Commonwealth.

2345 "Participating Covered Employee" means (i) all salaried nonfaculty College employees who were  
2346 employed as of the day prior to the Effective Date of the College's initial Management Agreement with  
2347 the Commonwealth, and who elect pursuant to § 23-38.115 of the Act, to participate in and be governed  
2348 by such human resources program or programs, plans, policies, and procedures established by the  
2349 College, (ii) all salaried nonfaculty College employees who are employed by the College on or after the  
2350 Effective Date of the initial Management Agreement between the College and the Commonwealth, (iii)  
2351 all nonsalaried nonfaculty College employees without regard to when they were hired, (iv) all faculty  
2352 College employees without regard to when they were hired.

2353 "Systems" means collectively the College Human Resources System that is in effect from time to  
2354 time.

### 2355 III. SCOPE AND PURPOSE OF COLLEGE HUMAN RESOURCES POLICIES.

2356 The College has had human resources system autonomy through decentralization for its employees  
2357 for some time. For example, general faculty at the College are expressly exempt from the Virginia  
2358 Personnel Act. The College has had decentralization in most human resources functions and activities  
2359 since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the  
2360 administration of hiring, classification, and promotion practices.

2361 The Act extends and reinforces the human resources autonomy previously granted to the College.  
2362 This Policy therefore is adopted by the Board of Visitors to enable the College to develop, adopt, and  
2363 have in place by or after the Effective Date of its initial Management Agreement with the  
2364 Commonwealth, a human resources system or systems for all College employees. On that Effective  
2365 Date, and until changed by the College or unless otherwise specified in this Policy, the systems for  
2366 College employees shall be the same systems applicable to those employees in effect immediately prior  
2367 to that Effective Date.

### 2368 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

2369 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
2370 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
2371 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
2372 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
2373 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,  
2374 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
2375 implementation of those duties and responsibilities pursuant to the College's usual delegation policies  
2376 and procedures.

### 2377 V. COLLEGE OF WILLIAM AND MARY HUMAN RESOURCES SYSTEMS.

#### 2378 A. Adoption and Implementation of College Human Resources Systems.

2379 The President is hereby authorized to adopt and implement human resources systems for employees  
2380 of the College that are consistent with the Governing Law, other applicable provisions of law, these  
2381 College human resources policies for College employees, and any other human resources policies  
2382 adopted by the Department of Human Resource Management or the Board of Visitors for College  
2383 personnel, unless College employees are exempted from those other human resources policies by law or  
2384 policy. The College Human Resources Systems shall include a delegation of personnel authority to  
2385 appropriate College officials responsible for overseeing and implementing the College Human Resources  
2386 Systems, including a grant of authority to such officials to engage in further delegation of authority as  
2387 the President or his designee deems appropriate.

2388 The College commits to regularly engage employees in appropriate discussions and to receive  
2389 employee input as the new College Human Resources Systems are developed. The College will regularly  
2390 communicate the details of new proposals to all employees who are eligible to participate in the College  
2391 Human Resources System through written communication, open meetings, and website postings as  
2392 appropriate, so that employees will have full information that will help them evaluate the merits of the  
2393 new human resource system compared to the then-current State human resource system.

2394 Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and  
2395 until amended as described below, the College's human resources systems shall consist of the following:

2396 1. The current "College of William and Mary Faculty Handbook," as it is posted on the Provost's  
2397 website, <http://www.wm.edu/provost/index.php>, and periodically amended; and

2398 2. The current human resources system for Classified Employees in the College as posted on the  
2399 Virginia Department of Human Resource Management website at  
2400 <http://www.dhrm.state.va.us/hrpolicy/policy.html>; and

2401 3. The human resources system for Participating Covered Employees, which shall include nonsalaried  
2402 (wage) employees, as posted on the College Human Resources website, <http://www.wm.edu/hr.html> and  
2403 periodically amended.

2404 All the systems describe above, except the system described in paragraph 3, may be amended by the  
2405 President, consistent with these human resources policies. The system described in paragraph 3 may be  
2406 amended only by the State.

2407 B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human  
2408 Resources Policies.

2409 The President, or designee, shall take all necessary and reasonable steps to assure (i) that the College  
2410 officials who develop, implement and administer the College Human Resources Systems authorized by  
2411 Governing Law and these human resources policies are knowledgeable regarding the requirements of the  
2412 Governing Law, other applicable provisions of law, these College human resources policies, and other  
2413 applicable Board of Visitors' human resources policies affecting College employees, and (ii) that  
2414 compliance with such laws and human resources policies is achieved.

#### 2415 VI. HUMAN RESOURCES POLICIES.

2416 The College Human Resources Systems adopted by the College pursuant to Governing Law and this  
2417 Policy, as set forth in Section V above, shall embody the following human resources policies and  
2418 principles:

2419 A. Election by College Salaried Nonfaculty Employees.

2420 Upon the adoption by the College of a College Human Resources System, each salaried nonfaculty  
2421 College employee who was in the employment of the College, as of the day prior to the Effective Date  
2422 of its initial Management Agreement with the Commonwealth shall be permitted to elect to participate in  
2423 and be governed by either (i) the State human resources program set forth in Chapters 28 (§ 2.2-2800 et  
2424 seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and administered by the  
2425 Department of Human Resource Management, or (ii) the College Human Resources System, as  
2426 appropriate. A salaried nonfaculty College employee who elects to continue to be governed by the State  
2427 human resources program described above shall continue to be governed by all State human resources  
2428 and benefit plans, programs, policies and procedures that apply to and govern State employees. A  
2429 salaried nonfaculty College employee who elects to participate in and be governed by the College  
2430 Human Resources System, by that election, shall be deemed to have elected to be eligible to participate  
2431 in and to be governed by the College human resources program, authorized alternative insurance, and  
2432 severance plans, programs, policies and procedures that are or may be adopted by the College as part of  
2433 that College Human Resources System.

2434 The College shall provide each of its salaried nonfaculty College employees who was in the  
2435 employment of the College as of the day prior to the Effective Date of the College's initial Management  
2436 Agreement with the Commonwealth at least 90 days after the date on which the College Human  
2437 Resources System becomes effective for that College employee's classification of employees to make the  
2438 election required by the prior paragraph. If such a salaried nonfaculty College employee does not make  
2439 an election by the end of that specified election period, that College employee shall be deemed not to  
2440 have elected to participate in the College Human Resources System. If such a salaried nonfaculty  
2441 College employee elects to participate in the College Human Resources System, that election shall be  
2442 irrevocable. At least every two years, the College shall offer to salaried nonfaculty College employees  
2443 who have elected to continue to participate in the state human resources program set forth in Chapters  
2444 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, an opportunity  
2445 to elect to participate in the College Human Resources System, provided that, each time prior to offering  
2446 such opportunity to such salaried nonfaculty College employees, and at least once every two years after  
2447 the effective date of the College Human Resources System, the College shall make available to each of  
2448 its salaried nonfaculty College employees a comparison of its human resources program for that  
2449 classification of salaried nonfaculty College employee with the State human resources program for  
2450 comparable State employees, including but not limited to a comparability assessment of compensation  
2451 and benefits. A copy of the human resources program comparison shall be provided to the Department  
2452 of Human Resource Management.

2453 B. Classification and Compensation.

2454 General. The Systems shall include classification and compensation plans that are fair and  
2455 reasonable, and are based on the availability of College financial resources. The plans adopted by the  
2456 College Participating Covered Employees shall be independent of, and need not be based on, the  
2457 classification and compensation plans of the Commonwealth, do not require the approval of any State

2458 agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth  
 2459 in paragraph 3 below. The College shall provide information on its classification and compensation  
 2460 plans to all College employees. The plans applicable to Participating Covered Employees may or may  
 2461 not include changes in classification or compensation announced by the Commonwealth depending on  
 2462 such factors as the availability of necessary financial resources to fund any such changes, and subject to  
 2463 the review and approval by the Board of Visitors of any major changes in the College's compensation  
 2464 plans.

2465 Classification Plan. The Systems shall include one or more classification plans for College  
 2466 employees that classify positions according to job responsibilities and qualifications. On the Effective  
 2467 Date of the College's initial Management Agreement with the Commonwealth, and until changed by the  
 2468 College, the classification plans shall be the same plans that are in effect for each group of employees  
 2469 immediately prior to that Effective Date.

2470 Compensation Plan. The Systems shall include one or more compensation plans for each College  
 2471 employee classification or group. On the Effective Date of the College's initial Management Agreement  
 2472 with the Commonwealth, and until changed by the Department of Human Resource Management, the  
 2473 compensation plan for Classified Employees in the College shall be the compensation plan in effect  
 2474 immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan.

2475 On that Effective Date, and until changed by the College, the compensation plan or plans for all  
 2476 Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to  
 2477 that Effective Date. The College may adopt one or more compensation plans for Participating Covered  
 2478 Employees that are non-graded plan(s) based on internal and external market data and other relevant  
 2479 factors to be determined annually. Any major change in compensation plans for Participating Covered  
 2480 Employees shall be reviewed and approved by the Board of Visitors before that change becomes  
 2481 effective. Any change recommended in the compensation plans may take into account the prevailing  
 2482 rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the  
 2483 competency and skills of the individual employee, internal equity, and the availability of necessary  
 2484 financial resources to fund the proposed change. The compensation payable to College employees shall  
 2485 be authorized and approved only by designated College officers delegated such authority by the College,  
 2486 and shall be consistent with the approved compensation plan for the relevant position or classification.  
 2487 Further approval by any other State Agency, governmental body or officer is not required for setting,  
 2488 adjusting or approving the compensation payable to individual Participating Covered Employees.

2489 Wages. The Systems shall include policies and procedures for the authorization, computation and  
 2490 payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and  
 2491 call back, and for the payment of hourly employees.

2492 Payment of Compensation. The Systems shall include policies and procedures for paying  
 2493 compensation to employees, including the establishment of one or more payday schedules.

2494 Work Schedule and Workweek. The Systems shall include policies and procedures for the  
 2495 establishment of, and modifications to, work schedules and workweeks for all College employees,  
 2496 including alternative work schedules and sites, and telecommuting policies and procedures.

2497 Other Classification and Compensation Policies and Procedures. The Systems may include any other  
 2498 reasonable classification and compensation policies and procedures the President deems appropriate.

2499 C. Benefits.

2500 The Systems shall provide fringe benefits to all benefits eligible employees, including retirement  
 2501 benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The  
 2502 benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may  
 2503 include an optional benefits plan for benefits eligible employees, including additional insurance  
 2504 coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance  
 2505 programs, employee intramural and recreational passes, and other wellness programs. As provided in  
 2506 § 23-38.119 B and C of the Act, the College may require Participating Covered Employees to pay all or  
 2507 a portion of the cost of group life, disability and accidental death and dismemberment insurance, which  
 2508 may be collected through a payroll deduction program. Participating Covered Employees shall not be  
 2509 required to present evidence of insurability for basic group life insurance coverage. The Board of  
 2510 Visitors may elect to provide benefits through Virginia Retirement System group insurance programs  
 2511 under the terms of and to the extent allowed by § 23-38.119 B and D of the Act or any other provision  
 2512 of law.

2513 Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until  
 2514 that section is amended, the state retirement system, state health insurance program, and state workers'  
 2515 compensation coverage program as they may be amended from time to time, shall continue to apply to  
 2516 and govern all eligible College employees.

2517 The Systems may provide different benefits plans for reasonably different groups or classifications of  
 2518 employees, and may provide benefits to part-time employees. On the Effective Date of the College's

2519 initial Management Agreement with the Commonwealth, and until changed by the appropriate governing  
2520 authority, the benefits plans provided by the College to Classified Employees and Participating Covered  
2521 Employees shall be the benefits plans provided to that group or classification as of the date immediately  
2522 prior to that Effective Date. On or after that Effective Date, alternative College group life, accidental  
2523 death and dismemberment, and short- and long-term disability plans may be provided to eligible  
2524 Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution  
2525 of participation agreements as provided in subsections B and C of § 23-38.119 of the Act, they may be  
2526 provided by the appropriate State programs, but no contributions to the state programs by the College  
2527 shall be required for Participating Covered Employees who do not participate in the programs. Subject  
2528 to the provisions of the Act, any new plans, programs and material changes permitted under current law  
2529 in College employee benefit plans, other than Classified Employee benefit plans, shall be approved by  
2530 the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the  
2531 limit permitted by the Code of Virginia based on available resources, and the authority to implement  
2532 cafeteria-style benefits for College employees other than Classified Employees.

2533 Insurance and all proceeds therefrom provided pursuant to § 23-38.119 of the Act shall be exempt  
2534 from legal process and may be subject to voluntary assignment as provided in subsection A of  
2535 § 23-38.119.

2536 D. Employee Relations.

2537 1. General. The Systems shall contain provisions that protect the rights and privileges of College  
2538 employees consistent with sound management principles and fair employment practice law.

2539 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety  
2540 compliance with applicable law and regulations.

2541 3. Employee Work Environment. The Systems shall promote a work environment that is conducive  
2542 to the performance of job duties, and free from intimidation or coercion in violation of State or federal  
2543 law, including sexual harassment or other discrimination.

2544 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses  
2545 specific to policies and procedures for awarding, honoring, or otherwise recognizing College employees,  
2546 including but not limited to those who have performed particularly meritorious service for the College,  
2547 have been employed by the College for specified periods of time, or have retired from the College after  
2548 lengthy service.

2549 5. Counseling Services. The Systems shall provide counseling services through the State's Employee  
2550 Assistance Program or a College Employee Assistance Program to any eligible College employee  
2551 experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the  
2552 circumstances under which the time necessary to participate in such counseling may be granted.

2553 6. Unemployment Compensation. The Systems shall ensure that College employees receive the full  
2554 unemployment compensation benefits to which they are legally entitled, and that the College's liability is  
2555 limited to legitimate claims for such benefits.

2556 7. Workers' Compensation. The Systems shall ensure that College employees have workers'  
2557 compensation benefits to which they are legally entitled pursuant to the State Employees Workers'  
2558 Compensation Program administered by the Department of Human Resource Management.

2559 8. Performance Planning and Evaluation. The Systems shall include one or more performance  
2560 planning and evaluation processes for College employees that (i) establish and communicate the  
2561 College's performance expectations, (ii) help develop productive working relationships, (iii) allow  
2562 employees to present their views concerning their performance, (iv) identify areas for training or  
2563 professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify  
2564 how superlative or inadequate performance shall be addressed, and (vii) ensure that all College  
2565 employees are provided relevant information on the evaluation process. The Systems may include  
2566 separate performance and evaluation processes for reasonably distinguishable groups of College  
2567 employees. On the Effective Date of the College's initial Management Agreement with the  
2568 Commonwealth, the existing merit-based performance management system for faculty shall continue,  
2569 until amended by the College. On or after that Effective Date, College nonfaculty salaried Participating  
2570 Covered Employees may be subject to a variable merit-based performance management system.

2571 9. Standards of Conduct and Performance. In order to protect the well-being and rights of all  
2572 employees and to ensure safe, efficient College operations and compliance with the law, the Systems  
2573 shall establish rules of personal conduct and standards of acceptable work performance for College  
2574 salaried nonfaculty employees and policies for corrective discipline. In general, the policies for  
2575 corrective discipline shall serve to (i) establish a uniform and objective process for correcting or  
2576 disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more  
2577 serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action  
2578 to employee conduct occurring only when employees are at work or are otherwise representing the  
2579 College in an official or work-related capacity, unless otherwise specifically provided by the policies of  
2580 the Systems or other applicable law. The Systems may provide for a probationary period for new and

2581 re-employed College salaried nonfaculty employees, during which period the policies for corrective  
 2582 discipline shall not be applicable and the employee may not use the grievance procedure set forth in the  
 2583 next paragraph. The Systems may include separate rules of personal conduct and standards of  
 2584 acceptable work performance and policies for corrective discipline for reasonably distinguishable groups  
 2585 of College employees.

2586 10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to  
 2587 resolve employment-related problems and complaints informally, and shall be permitted to discuss their  
 2588 concerns freely and without fear of retaliation with immediate supervisors and management. In the  
 2589 event that such problems cannot be resolved informally, all salaried nonfaculty College employees,  
 2590 regardless of their date of hire, shall have access, as provided in subsection A of § 23-38.114 and in  
 2591 § 23-38.117 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of  
 2592 the Code of Virginia, to the extent it was applicable to their classification of employees prior to the  
 2593 Effective Date of the College's initial Management Agreement with the Commonwealth. On that  
 2594 Effective Date, and until changed by the College, the faculty grievance procedures in effect immediately  
 2595 prior to the Effective Date shall continue.

2596 11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the  
 2597 Classified Employee may file a complaint with the Department of Human Resource Management Office  
 2598 of Equal Employment Services. All Covered Employees and applicants for employment after the  
 2599 Effective Date of the College's initial Management Agreement with the Commonwealth shall file a  
 2600 complaint with the appropriate College office or with the appropriate federal agencies.

2601 12. Layoff Policy. The Systems shall include one or more layoff policies for salaried College  
 2602 employees who lose their jobs for reasons other than their job performance or conduct, such as a  
 2603 reduction in force or reorganization at the College. These College layoff policies shall govern such  
 2604 issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)  
 2605 notice to employees affected by a layoff, (iv) placement options within the College or its respective  
 2606 major divisions and within other parts of the College, (v) the preferential employment rights, if any, of  
 2607 various College employees, (vi) the effect of layoff on leave and service, and (vii) the policy for  
 2608 recalling employees. In accordance with the terms of the Act, College employees who: (i) were  
 2609 employed prior to the Effective Date of the College's initial Management Agreement with the  
 2610 Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition  
 2611 Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated  
 2612 because of a reduction in force shall have the same preferential hiring rights with State agencies and  
 2613 other executive branch institutions as Classified Employees have under § 2.2-3201 of the Code of  
 2614 Virginia. Conversely, the College shall recognize the hiring preference conferred by § 2.2-3201 on State  
 2615 employees who were hired by a State agency or executive branch institution before the Effective Date of  
 2616 the College's initial Management Agreement with the Commonwealth and who were separated after that  
 2617 date by that State agency or executive branch institution because of a reduction in workforce. If the  
 2618 College has adopted a classification system pursuant to § 23-38.116 of the Act that differs from the  
 2619 classification system administered by the Department of Human Resource Management, the College shall  
 2620 classify the separated employee according to its classification system and shall place the separated  
 2621 employee appropriately. The College may include separate policies for reasonably distinguishable  
 2622 groups of College employees. On or after the Effective Date of the College's initial Management  
 2623 Agreement with the Commonwealth, all employees from other State agencies and executive branch  
 2624 institutions who are placed by the College under the provisions of the State Layoff Policy shall be  
 2625 Participating Covered Employees.

2626 13. Severance Benefits. In accordance with the terms of the Act, the College shall adopt severance  
 2627 policies for salaried Participating Covered Employees who are involuntarily separated for reasons  
 2628 unrelated to performance or conduct. The terms and conditions of such policies shall be determined by  
 2629 the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior  
 2630 to the Effective Date of the College's initial Management Agreement with the Commonwealth shall be  
 2631 covered by the Workforce Transition Act, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of  
 2632 Virginia. The College and the Board of the Virginia Retirement System may negotiate a formula  
 2633 according to which cash severance benefits may be converted to years of age or creditable service for  
 2634 Participating Covered Employees who participate in the Virginia Retirement System. An employee's  
 2635 becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in  
 2636 force to which severance or Workforce Transition Act policies would apply.

2637 14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i)  
 2638 establish and maintain a work environment at the College that is free from the adverse effect of alcohol  
 2639 and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the  
 2640 College of William and Mary Alcohol and Other Drugs Policy, (iii) describe the range of authorized  
 2641 disciplinary action, including termination where appropriate, for violations of such policies and

2642 procedures, and the process to be followed in taking such disciplinary action, (iv) provide College  
2643 employees access to assistance and treatment for problems involving alcohol and other drugs, (v)  
2644 provide for the circumstances under which employees are required to report certain violations of the  
2645 policies and procedures to their supervisor, and the College is required to report those violations to a  
2646 federal contracting or granting agency, (vi) describe the circumstances under which personnel records of  
2647 actions taken under the College's alcohol and other drugs policy shall not be kept confidential, and (vii)  
2648 provide notice to College employees of the scope and content of the College alcohol and other drugs  
2649 policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus  
2650 Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable  
2651 suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for College  
2652 positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License.

2653 15. Background Checks. The Systems shall include a process for conducting background checks,  
2654 which may include but is not limited to reference checks, educational/ professional credentialing checks,  
2655 and conviction and driver's records checks on applicants for full-time or part-time positions at the  
2656 College, and for addressing situations where employees do not disclose a conviction on their application  
2657 or otherwise falsify their application with regard to information concerning their education/professional  
2658 credential and/or prior convictions.

2659 16. Other Employee Relations Policies and Procedures. The Systems shall include any other  
2660 reasonable employee relations policies or procedures that the President deems appropriate, which may  
2661 include, but are not limited to, policies or procedures relating to orientation programs for new or  
2662 re-employed College employees, an employee suggestion program, the responsibility of College  
2663 employees for property placed in their charge, work breaks, inclement weather and emergencies, and  
2664 employment outside the College.

2665 E. Leave and Release Time.

2666 The Systems shall include policies and procedures regarding leave for eligible employees. The  
2667 Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal  
2668 uses. The Systems may provide for release time for such matters as the donation of blood, participation  
2669 in an employee assistance program and other appropriate employment-related matters. On or after the  
2670 Effective Date of its initial Management Agreement with the Commonwealth, and until a new program  
2671 is adopted by the appropriate authority, the College shall continue to provide leave and release time to  
2672 Participating Covered Employees in accordance with the leave and release time policies and procedures  
2673 applicable to each classification of employees prior to that Effective Date. On or after that Effective  
2674 Date, the College may provide an alternative leave and release time system for salaried nonfaculty  
2675 Participating Covered Employees.

2676 F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.

2677 1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and  
2678 procedures to ensure that all aspects of human resources management, including the employment of  
2679 College employees, meet all requirements of federal and state law, and of the relevant policies of the  
2680 Board of Visitors, with regard to equal employment opportunity and nondiscrimination.

2681 Employment. The Systems shall include policies and procedures for the recruitment, selection and  
2682 hiring of College employees that are based on merit and fitness, including where appropriate a  
2683 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference  
2684 checks and conviction record checks. On and after the Effective Date of its initial Management  
2685 Agreement with the Commonwealth, the College shall post all salaried nonfaculty position vacancies  
2686 through the College's job posting system, the Commonwealth's job posting system, and other external  
2687 media as appropriate. The Systems shall establish designated veterans' re-employment rights in  
2688 accordance with applicable law.

2689 In order to encourage employees to attain the highest level positions for which they are qualified,  
2690 and to compensate employees for accepting positions of increased value and responsibility, the Systems  
2691 shall include policies and procedures governing the promotion of employees, including the effect of  
2692 promotion on an employee's compensation.

2693 On or after the Effective Date of the College's initial Management Agreement with the  
2694 Commonwealth, all employees hired from other state agencies shall be Participating Covered  
2695 Employees. College Classified Employees who change jobs within the College through a competitive  
2696 employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified  
2697 Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a  
2698 Participating Covered Employee, that decision shall be irrevocable.

2699 Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice,  
2700 where appropriate, of a decision either by the employee or by the College to separate the employee from  
2701 the College in accordance with policies governing performance, conduct, or layoff.

2702 G. Information Systems.

2703 The College shall provide an electronic file transfer of information on all salaried College employees

2704 and shall continue to provide the Employee Position Reports to meet the human resources reporting  
 2705 requirements specified by law or by request of the Governor or the General Assembly, unless the  
 2706 College is specifically exempted from those requirements. The College shall conduct assessments to  
 2707 demonstrate its accountability for human resources practices that comply with laws and regulations. The  
 2708 Department of Human Resource Management and the College have entered into a Memorandum of  
 2709 Understanding, attached hereto as Attachment 2, which may be amended from time to time by  
 2710 agreement of the parties, regarding the specific data and reporting requirements. The College shall be  
 2711 accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human  
 2712 Resources Management.

2713 VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA  
 2714 AND OTHER BOARD OF VISITORS' POLICIES AFFECTING COLLEGE PERSONNEL.

2715 On and after the Effective Date of its initial Management Agreement with the Commonwealth,  
 2716 College employees shall be subject to the terms and conditions of the Act and the Management  
 2717 Agreement between the Commonwealth and the College. Classified Employees shall continue to be  
 2718 subject to the human resources policies and exceptions to those policies adopted or approved by the  
 2719 Department of Human Resource Management.

2720 In addition, all College employees also shall remain subject to any other human resources policies  
 2721 adopted by the Board of Visitors applicable to College personnel unless College employees or a subset  
 2722 thereof are specifically exempted from those other human resources policies either by those other  
 2723 policies or by this Policy.

2724  
 2725 ATTACHMENT 2

2726 Memorandum of Understanding  
 2727 Between The College of William and Mary and the  
 2728 Department of Human Resources Management Regarding  
 2729 The Reporting of Human Resources Management Data

2730 This Memorandum of Understanding, which may be amended from time to time by the agreement of  
 2731 all parties, is an attachment to the Policy Governing Human Resources for Participating Covered  
 2732 Employees and Other College Employees pursuant to the Restructured Higher Education Financial and  
 2733 Administrative Operations Act of 2005, and is hereby entered into between the College of William and  
 2734 Mary and the Department of Human Resource Management (DHRM).

2735 I. This document outlines the provisions for information management pertaining to human resources  
 2736 data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting  
 2737 requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so  
 2738 through efficient and cost-effective methods.

2739 1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will  
 2740 be transmitted through an electronic file transfer to update DHRM's warehouse.

2741 a. The College will provide a flat file of designated personnel data. For "Classified Employees," the  
 2742 data provided will match DHRM's data values for the designated fields. For salaried "Participating  
 2743 Covered Employees," the data provided will include the University's data values for the designated  
 2744 fields. The College will provide a data dictionary to DHRM. The file of designated data will be  
 2745 specifically described by an addendum to this Memorandum upon the agreement of the University and  
 2746 DHRM.

2747 b. The College will provide a second flat file of salaried personnel actions for "Classified  
 2748 Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary  
 2749 adjustments. The file of relevant personnel actions and designated data to be provided for each action  
 2750 will be specifically described by an addendum to this Memorandum upon the agreement of the  
 2751 University and DHRM.

2752 2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact  
 2753 analyses of employment and compensation actions that are part of the AAP, as demonstration of the  
 2754 College's compliance with relevant federal and state employment laws and regulations.

2755 3. The College may key data into the Benefits Enrollment System or provide a batch file, or  
 2756 employees may use Employee Direct (employee self-service).

2757 4. Other reports to be provided by the College include the following:

2758 a. Monthly Employment Position Report.

2759 b. Annual report on salaried, wage, and contract employees.

2760 The undersigned hereby agree to the provisions contained in the MOU.

2761 APPROVALS:

2762  
 2763  
 2764 The College of William and Mary:

2765  
 2766 By: .....Date.....  
 2767 Vice President for Administration

2768  
 2769  
 2770 Department of Human Resources Management:

2771  
 2772 By: .....Date.....  
 2773 Director, Department of Human Resources Management

2774  
 2775 EXHIBIT L

2776  
 2777 MANAGEMENT AGREEMENT  
 2778 BETWEEN  
 2779 THE COMMONWEALTH OF VIRGINIA  
 2780 AND  
 2781 THE COLLEGE OF WILLIAM AND MARY  
 2782 PURSUANT TO  
 2783 THE RESTRUCTURED HIGHER EDUCATION  
 2784 FINANCIAL AND ADMINISTRATIVE OPERATIONS  
 2785 ACT OF 2005

2786  
 2787 POLICY GOVERNING  
 2788 FINANCIAL OPERATIONS AND MANAGEMENT

2789  
 2790 THE RECTOR AND BOARD OF VISITORS  
 2791 OF THE COLLEGE OF WILLIAM AND MARY  
 2792 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

2793 I. PREAMBLE.

2794 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter  
 2795 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting  
 2796 additional authority to institutions of higher education for financial operations and management, subject  
 2797 to the adoption of policies by their governing boards and the approval of management agreements to be  
 2798 negotiated with the Commonwealth.

2799 The following provisions of this Policy constitute the adopted Board of Visitors policies regarding  
 2800 the College of William and Mary's financial operations and management.

2801 This Policy is intended to cover the authority that may be granted to the College pursuant to  
 2802 Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the  
 2803 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act  
 2804 and the College's Enabling Legislation, are not affected by this Policy.

2805 II. DEFINITIONS.

2806 As used in this policy, the following terms shall have the following meanings, unless the context  
 2807 requires otherwise:

2808 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
 2809 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

2810 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William  
 2811 and Mary and the Virginia Institute of Marine Science.

2812 "College" means the College of William and Mary (State Agency 204) and the Virginia Institute of  
 2813 Marine Science (State Agency 268).

2814 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with  
 2815 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has  
 2816 entered into a Management Agreement with the Commonwealth to be governed by the provisions of  
 2817 Subchapter 3 of the Act.

2818 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of  
 2819 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions  
 2820 of the College.

2821 "Effective Date" means the effective date of the initial Management Agreement between the College  
 2822 and the Commonwealth.

2823 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act  
 2824 between the College and the Commonwealth of Virginia.

2825 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section  
 2826 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from

2827 general government funds, as defined in the December 20, 2004 Report to the Governor and General  
2828 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

2829 III. SCOPE OF POLICY.

2830 This Policy applies to the College's responsibility for management, investment and stewardship of all  
2831 its financial resources, including but not limited to, general, non-general and private funds. This  
2832 responsibility includes maintaining an independent uniform system of accounting, financial reporting,  
2833 and internal controls adequate to protect and account for the College's financial resources.

2834 The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it  
2835 is implemented by the College on behalf of the Institute, but the Institute shall not receive any  
2836 additional independent financial operations and management authority as a result of this Management  
2837 Agreement beyond the independent financial operations and management authority that it had prior to  
2838 the Effective Date of the College's initial Management Agreement with the Commonwealth or that it  
2839 may be granted by law in the future.

2840 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

2841 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
2842 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
2843 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
2844 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
2845 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,  
2846 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
2847 implementation of those duties and responsibilities pursuant to the College's usual delegation policies  
2848 and procedures.

2849 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

2850 The President, or designee, shall continue to be authorized by the Board to maintain existing and  
2851 implement new policies governing the management of College financial resources. These policies shall  
2852 continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency  
2853 with the current accounting principles employed by the Commonwealth, including the use of fund  
2854 accounting principles, with regard to the establishment of the underlying accounting records of the  
2855 College and the allocation and utilization of resources within the accounting system, including the  
2856 relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with  
2857 regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide  
2858 adequate risk management and internal controls to protect and safeguard all financial resources,  
2859 including moneys transferred to the College pursuant to a general fund appropriation, and ensure  
2860 compliance with the requirements of the Appropriation Act.

2861 The financial management system shall continue to include a financial reporting system to satisfy  
2862 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,  
2863 as specified in the related State Comptroller's Directives, and the College's separately audited financial  
2864 statements. To ensure observance of limitations and restrictions placed on the use of the resources  
2865 available to the College, the accounting and bookkeeping system of the College shall continue to be  
2866 maintained in accordance with the principles prescribed for governmental organizations by the  
2867 Governmental Accounting Standards Board.

2868 In addition, the financial management system shall continue to provide financial reporting for the  
2869 President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the  
2870 financial operations of the College. Upon the Effective Date of the initial Management Agreement  
2871 between the College and the Commonwealth, except for the recordation of daily revenue deposits of  
2872 State funds as specified in Section VII below, the College shall not be required to record its financial  
2873 transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the  
2874 current monthly interfacing with CARS , or be a part of any subsequent Commonwealth financial  
2875 systems that replace CARS or are in addition to CARS, but shall have its own financial reporting  
2876 system. The College's financial reporting system shall provide (i) summary monthly reports for State  
2877 agencies including, but not limited to, the Department of Accounts, the Department of Planning and  
2878 Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the  
2879 State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on  
2880 Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule,  
2881 and using such format that is compatible with the Commonwealth's accounting system, as may be  
2882 requested by the requesting State agency, and (ii) such other special reports as may be requested from  
2883 time to time.

2884 VI. FINANCIAL MANAGEMENT POLICIES.

2885 The President, or designee, shall create and implement any and all financial management policies  
2886 necessary to establish a financial management system with adequate risk management and internal  
2887 control processes and procedures for the effective protection and management of all College financial

2888 resources. Such policies will not address the underlying accounting principles and policies employed by  
2889 the Commonwealth and the College, but rather will focus on the internal operations of the College's  
2890 financial management. These policies shall include, but need not be limited to, the development of a  
2891 tailored set of finance and accounting practices that seek to support the College's specific business and  
2892 administrative operating environment in order to improve the efficiency and effectiveness of its business  
2893 and administrative functions. In general, the system of independent financial management policies shall  
2894 be guided by the general principles contained in the Commonwealth's Accounting Policies and  
2895 Procedures such as establishing strong risk management and internal accounting controls to ensure  
2896 College financial resources are properly safeguarded and that appropriate stewardship of public funds is  
2897 obtained through management's oversight of the effective and efficient use of such funds in the  
2898 performance of College programs.

2899 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College  
2900 shall continue to follow the Commonwealth's accounting policies until such time as specific alternate  
2901 policies can be developed, approved and implemented. Such alternate policies shall include applicable  
2902 accountability measures and shall be submitted to the State Comptroller for review and comment before  
2903 they are implemented by the College.

#### 2904 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

2905 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the  
2906 College shall have the power and authority to manage all monies received by it. All State general funds  
2907 to be allocated to the College shall remain subject to the appropriations process.

2908 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher  
2909 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General  
2910 Assembly the degree to which each public institution of higher education of the Commonwealth has met  
2911 the financial and administrative management and educational-related performance benchmarks called for  
2912 by that subsection and approved as part of the Appropriation Act then in effect for the State goals and  
2913 objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005  
2914 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year  
2915 for which the financial and administrative management and educational-related performance benchmarks  
2916 described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal  
2917 years thereafter, each public institution of higher education of the Commonwealth that (i) has been  
2918 certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and  
2919 (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain financial  
2920 incentives, including interest on the tuition and fees and other non-general fund Education and General  
2921 Revenues deposited into the State Treasury by the public institution of higher education.

2922 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for  
2923 which it has received such certification from SCHEV, the College is authorized to hold and invest  
2924 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise  
2925 funds, and all other non-general fund revenues subject to the following requirements:

2926 i) The College shall deposit such funds in the State Treasury pursuant to the State process in place  
2927 at the time of such deposit;

2928 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section  
2929 IX below;

2930 iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold  
2931 in escrow all interest earned on the College's tuition and fees and other non-general fund Educational  
2932 and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia  
2933 certification that the College has met such institutional performance benchmarks and the conditions  
2934 prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a  
2935 non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year,  
2936 equivalent to the amount deposited in the escrow account as the financial incentive provided in  
2937 subdivision 1 of § 2.2-5005, after which time the College may expend the funds for purposes related to  
2938 its mission. If public institutions of higher education of the Commonwealth are permitted, or the College  
2939 in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the  
2940 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall  
2941 not apply to such interest on such funds, and such interest shall not be held in escrow.

2942 iv) If in any given year the College does not receive the certification from the State Council of  
2943 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by  
2944 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall  
2945 transfer to the general fund the balance in the escrow account as of June 30 of that year.

2946 v) Beginning on the effective date of its initial Management Agreement with the College until the  
2947 beginning of the first fiscal year following the fiscal year for which it has received the required  
2948 certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds  
2949 with the State Treasurer by the same process that it would have been required to use if it had not

2950 entered into a Management Agreement with the Commonwealth.

2951 vi) On the first business day of the first fiscal year following the fiscal year for which it has  
2952 received the required certification from SCHEV, the College may draw down all cash balances held by  
2953 the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored  
2954 programs, auxiliary enterprises, and all other non-general fund revenues.

2955 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay  
2956 these funds to the College as specified in Section IX below.

2957 The College also shall have sum sufficient appropriation authority for all non-general funds as  
2958 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations  
2959 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general  
2960 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of  
2961 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be  
2962 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of  
2963 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the  
2964 Department of Planning and Budget by July 31 of the subsequent fiscal year.

2965 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other  
2966 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income  
2967 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the  
2968 intent of the Commonwealth and the College that the College shall be exempt from the revenue  
2969 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,  
2970 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the  
2971 College that the College shall be entitled to retain non-general fund savings generated from changes in  
2972 Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates,  
2973 retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such  
2974 savings back to the Commonwealth. This financial resource policy assists the College by providing the  
2975 framework for retaining and managing non-general funds, for the receipt of general funds, and for the  
2976 use and stewardship of all these funds.

2977 The President, or designee, shall continue to provide oversight of the College's cash management  
2978 system which is the framework for the retention of non-general funds. The Internal Audit Department of  
2979 the College shall periodically audit the College's cash management system in accordance with  
2980 appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors.  
2981 Additional oversight shall continue to be provided through the annual audit and assessment of internal  
2982 controls performed by the Auditor of Public Accounts.

2983 For the receipt of general and non-general funds, the College shall conform to the Security for Public  
2984 Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia, as it currently exists  
2985 and from time to time may be amended.

#### 2986 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

2987 The President, or designee, shall continue to be authorized to create and implement any and all  
2988 Accounts Receivable Management and Collection policies as part of a system for the management of  
2989 College financial resources. The policies shall be guided by the requirements of the Virginia Debt  
2990 Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the College shall take  
2991 all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

2992 These shall include, but not be limited to, establishing the criteria for granting credit to College  
2993 customers; establishing the nature and timing of collection procedures within the above general  
2994 principles; and the independent authority to select and contract with collection agencies and, after  
2995 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all  
2996 collection activities for all College accounts receivable such as reporting delinquent accounts to credit  
2997 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In  
2998 accordance with sound collection activities, the College shall continue to utilize the Commonwealth's  
2999 Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax  
3000 Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly  
3001 summary report of receivables to the Department of Accounts in accordance with the reporting  
3002 procedures established pursuant to the Virginia Debt Collection Act.

#### 3003 IX. DISBURSEMENT MANAGEMENT.

3004 The President, or designee, shall continue to be authorized to create and implement any and all  
3005 disbursement policies as part of a system for the management of College financial resources. The  
3006 disbursement management policies shall continue to define the appropriate and reasonable uses of all  
3007 funds, from whatever source derived, in the execution of the College's operations. These policies also  
3008 shall continue to address the timing of appropriate and reasonable disbursements consistent with the  
3009 Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's  
3010 mission, including travel-related disbursements. Further, the College's disbursement policy shall continue

3011 to provide for the mechanisms by which payments are made including the use of charge cards, warrants,  
3012 and electronic payments. Since the College no longer will interface to the CARS system or any  
3013 replacement for the CARS system for disbursements, the College shall establish its own mechanisms for  
3014 electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and  
3015 payments to the Commonwealth's Debt Set Off Collection Programs.

3016 Beginning with the fiscal year after the first fiscal year for which it first receives the required  
3017 certification from SCHEV, the College may draw down its general fund appropriations (subject to  
3018 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.  
3019 Such funds shall be available to the College for disbursement as provided in the then-current rules of the  
3020 Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance  
3021 with the following schedule:

3022 i) The College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for  
3023 Educational and General programs on the first and fifteenth days of each month, and up to 50% of its  
3024 annual general fund appropriation for Student Financial Assistance on or after September 1 of each year  
3025 with the remaining 50% to be drawn on or after February 1 of each year in order to meet student  
3026 obligations;

3027 ii) The College may draw down the sum of all tuition and E&G fees and all other non-general  
3028 revenues deposited to the State Treasury each day on the same business day they were deposited; and

3029 iii) The College anticipates that expenditures could exceed available revenues from time to time  
3030 during the year if the above disbursement schedule is used. When the College projects a cost deficit in  
3031 activities supported by general fund appropriations, the College may make a request to the State  
3032 Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a  
3033 form and within a timeframe agreeable to the parties, in order to cover expenditures.

3034 These disbursement policies shall authorize the President, or designee, to independently select,  
3035 engage, and contract for such consultants, accountants, and financial experts, and other such providers of  
3036 expert advice and consultation, and, after consultation with the Office of the Attorney General, private  
3037 attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to  
3038 include the ability to locally manage and administer the Commonwealth's credit card and cost recovery  
3039 programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts  
3040 governing those programs, provided that the College shall submit the credit card and cost recovery  
3041 aspects of its financial and operations policies to the State Comptroller for review and comment prior to  
3042 implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk  
3043 management and internal control procedures shall be maintained over previously decentralized processes  
3044 for public records, payroll, and non-payroll disbursements. The College shall continue to provide  
3045 summary quarterly prompt payment reports to the Department of Accounts in accordance with the  
3046 reporting procedures established pursuant to the Prompt Payment Act.

3047 The College's disbursement policies shall be guided by the principles of the Commonwealth's policies  
3048 as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date  
3049 of its initial Management Agreement with the Commonwealth, the College shall continue to follow the  
3050 Commonwealth's disbursement policies until such time as specific alternative policies can be developed,  
3051 approved and implemented. Such alternate policies shall be submitted to the State Comptroller for  
3052 review and comment prior to their implementation by the College.

#### 3053 X. DEBT MANAGEMENT.

3054 The President, or designee, shall continue to be authorized to create and implement any and all debt  
3055 management policies as part of a system for the management of College financial resources.

3056 Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or  
3057 other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board,  
3058 and that are consistent with debt capacity and management policies and guidelines established by its  
3059 Board of Visitors, without obtaining the consent of any legislative body, elected official, commission,  
3060 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any  
3061 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided  
3062 that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this  
3063 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised  
3064 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and  
3065 comment prior to its adoption by the College.

3066 The College recognizes that there are numerous types of financing structures and funding sources  
3067 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by  
3068 the President, or designee, within the context of the overall portfolio to ensure that any financial product  
3069 or structure is consistent with the College's objectives. Regardless of the financing structure(s) utilized,  
3070 the President, or designee, shall obtain sufficient documentation to gain a full understanding of the  
3071 transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the  
3072 impact on College creditworthiness and debt capacity. All such debt or financial products issued

3073 pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act, shall be authorized by resolution  
3074 of the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

3075 The College will establish guidelines relating to the total permissible amount of outstanding debt by  
3076 monitoring College-wide ratios that measure debt compared to College balance-sheet resources and  
3077 annual debt service burden. These measures will be monitored and reviewed regularly in light of the  
3078 College's current strategic initiatives and expected debt requirements. The Board of Visitors shall  
3079 periodically review and approve the College's debt capacity and debt management guidelines. Any  
3080 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to  
3081 their adoption by the College.

#### 3082 XI. INVESTMENT POLICY.

3083 It is the policy of the College to invest its operating and reserve funds solely in the interest of the  
3084 College and in a manner that will provide the highest investment return with the maximum security  
3085 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act  
3086 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence  
3087 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and  
3088 familiar with such matters would use in the conduct of an enterprise of a like character and with like  
3089 aims.

3090 Endowment investments shall be invested and managed in accordance with the Uniform Management  
3091 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

3092 The Board of Visitors shall periodically review and approve the investment guidelines governing the  
3093 College's operating and reserve funds.

#### 3094 XII. INSURANCE AND RISK MANAGEMENT.

3095 By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any  
3096 intent during the next biennium to withdraw from any insurance or risk management program made  
3097 available to the College through the Commonwealth's Division of Risk Management and in which the  
3098 College is then participating, to enable the Commonwealth to complete an adverse selection analysis of  
3099 any such decision and to determine the additional costs to the Commonwealth that would result from  
3100 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College  
3101 proceeds to withdraw from the insurance or risk management program, the College shall reimburse the  
3102 Commonwealth for all such additional costs attributable to such withdrawal, as determined by the  
3103 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and  
3104 the Commonwealth.

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