2009 SESSION

	093418652
1	HOUSE BILL NO. 2464
2	AMENDMENT IN THE NATURE OF A SUBSTITUTE
3	(Proposed by the House Committee on Appropriations
4	on February 4, 2009)
5	(Patron Prior to Substitute—Delegate Morgan)
6 7	A BILL to amend and reenact § 4.3 and Exhibit A, Attachment 1 and Attachment 2 of Exhibit D, and Exhibit F of the first enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3 and
8	Exhibit G, Attachment 1 of Exhibit J, and Exhibit L of the second enactment of Chapters 933 and
9	943 of the Acts of Assembly of 2006; § 4.3 and Exhibit M, Attachment 1 and Attachment 2 of Exhibit
10	<i>P</i> , and Exhibit <i>R</i> of the third enactment of Chapters 933 and 943 of the Acts of Assembly of 2006;
11	the fifth enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3, Attachment 1 of
12	Exhibit D, and Exhibit F of the first enactment of Chapters 594 and 616 of the Acts of Assembly of
13	2008; and the third enactment of Chapters 594 and 616 of the Acts of Assembly of 2008 relating to
14	the management agreements between the Commonwealth and Virginia Polytechnic Institute and State
15	University, the College of William and Mary in Virginia, the University of Virginia, and Virginia
16 17	Commonwealth University, respectively. Bo it expected by the Concercl Accomply of Virginia.
17 18	Be it enacted by the General Assembly of Virginia: 1. That § 4.3 and Exhibit A, Attachment 1 and Attachment 2 of Exhibit D, and Exhibit F of the
19	first enactment of Chapter 933 of the Acts of Assembly of 2006; § 4.3 and Exhibit G, Attachment
20	1 of Exhibit J, and Exhibit L of the second enactment of Chapter 933 of the Acts of Assembly of
21	2006; § 4.3 and Exhibit M, Attachment 1 and Attachment 2 of Exhibit P, and Exhibit R of the
22	third enactment of Chapter 933 of the Acts of Assembly of 2006; and the fifth enactment of
23	Chapter 933 of the Acts of Assembly of 2006 are amended and reenacted as follows:
24	SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June
25 26	30, 20102012, provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification
27 27	that this Management Agreement needs to be renegotiated or revised. If such notification is not
28	received, this Management Agreement shall continue in effect until June 30, 2015.
29	EXHIBITĂ
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31	MANAGEMENT AGREEMENT
32 33	BETWEEN THE COMMONWEALTH OF VIRGINIA
33 34	AND
35	VIRGINIA POLYTECHNIC INSTITUTE
36	AND STATE UNIVERSITY
37	PURSUANT TO
38	THE RESTRUCTURED HIGHER EDUCATION
39 40	FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005
41	ACT 01 2005
42	POLICY GOVERNING
43	CAPITAL PROJECTS
44	
45 46	THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
40 47	POLICY GOVERNING CAPITAL PROJECTS
48	I. PREAMBLE.
49	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
50	4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the
51	University may be delegated the authority to establish its own system for undertaking the
52	implementation of its capital projects. In general, status as a Covered Institution is designed to replace
53 54	the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional preauthorization approval process for projects funded
54 55	entirely with non-general funds and without any proceeds from State Tax Supported Debt. The
56	University's system for carrying out its capital outlay process as a Covered Institution is to be governed
57	by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the
58	Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition
59	of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services,

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60 Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted 61 Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to 62 63 encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 64 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation 65 Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. 66 67 **II. DEFINITIONS.** As used in this policy, the following terms shall have the following meanings, unless the context 68 69 requires otherwise: 70 'Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia. 71 "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and 72 73 State University. 74 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting 75 Principles pursuant to the pronouncement of the Financial Accounting Standards Board. "Capital Professional Services" means professional engineering, architecture, land surveying and 76 77 landscape architecture services related to capital projects. 78 "Capital project(s)" means the acquisition of any interest in land, including improvements on the 79 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital 80 Leases. 81 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a 82 83 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of 84 the Act.

85 'Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of 86 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions 87 of the individual public institutions of higher education of the Commonwealth.

"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on 88 89 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing 90 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

91 "State Tax Supported Debt" means bonds, notes, or other obligations issued under Article X, Section 92 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 93 general government funds, as defined in the December 20, 2004 Report to the Governor and General 94 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means Virginia Polytechnic Institute and State University, consisting of the University 95 96 Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment 97 Station Division (State Agency 229).

III. SCOPE OF POLICY.

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99 This Policy applies to the planning and budget development for capital projects, capital project 100 authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other 101 102 sources.

103 This Policy provides guidance for 1) the process for developing one or more capital project programs 104 for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) 105 environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) 106 building and land dispositions, 9) project management systems, and 10) reporting requirements. 107 108

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

109 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 110 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 111 112 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 113 114 while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies 115 and procedures. 116

V. CAPITAL PROGRAM.

118 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a 119 system for developing one or more capital project programs that defines or define the capital needs of 120 the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of 121

122 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be 123 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from 124 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board 125 may approve amendments to the program for Major Capital Projects annually or more often if 126 circumstances warrant. It shall be University policy that each capital project program shall meet the 127 University's mission and institutional objectives, and be appropriately authorized by the University. 128 Moreover, it shall be University policy that each capital project shall be of a size and scope to provide 129 for the defined program needs, designed in accordance with all applicable building codes and 130 handicapped accessibility standards as well as the University's design guidelines and standards, and 131 costed to reflect current costs and escalated to the mid-point of anticipated construction.

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VI. AUTHORIZATION OF CAPITAL PROJECTS.

133 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its 134 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief 135 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other 136 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund 137 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 138 Board of Visitors approval and those preappropriation approvals of the State's governmental agencies 139 then applicable, and shall follow the State's process for capital budget requests.

140 It shall be the policy of the University that the implementation of capital projects shall be carried out 141 so that the capital project as completed is the capital project approved by the Board for Major Capital 142 Projects and according to the procedures adopted by the President, acting through the Executive Vice 143 President and Chief Operating Officer, for all other capital projects. The President, acting through the 144 Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement. 145 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the 146 plans and justifications that were the basis for the capital project's approval, either before or during 147 construction, unless approved in advance as described above. Minor changes shall be permissible if they 148 are determined by the President, acting through the Executive Vice President and Chief Operating 149 Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at 150 any time but must include a statement of urgency if not part of the approved Major Capital Project 151 program.

152 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 153 SERVICES.

154 It shall be the policy of the University that procurements shall result in the purchase of high quality 155 services and construction at reasonable prices and shall be consistent with the Policy Governing the 156 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 157 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and 158 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed 159 to:

160 A. Seeking competition to the maximum practical degree, taking into account the size of the 161 anticipated procurement, the term of the resulting contract and the likely extent of competition;

162 B. Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the 163 appearance of any impropriety prohibited by State law or University policy;

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

165 D. Providing access to the University's business to all qualified vendors, firms and contractors, with 166 no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to 167 engage in cooperative procurements and to meet special needs of the University;

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

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

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

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

182 B. A prequalification procedure for contractors or products;

183 C. A procedure for special construction contracting methods, including but not limited to 184 design-build and construction management contracts; and

185 D. A prompt payment procedure.

186 The University also may enter into cooperative arrangements with other private or public health or 187 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, 188 in the judgment of the University, the purposes of this Policy will be furthered. 189

VIII. DESIGN REVIEWS AND CODE APPROVALS.

190 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final 191 Major Capital Project authorization based on the size, scope and cost estimate provided with the design. 192 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be 193 required. For all capital projects other than Major Capital Projects, the President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and 194 195 project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with 196 applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable 197 198 accessibility code.

199 The President, acting through the Executive Vice President and Chief Operating Officer, shall 200 designate a Building Official responsible for building code compliance by either (i) hiring an individual 201 to be the University Building Official, or (ii) continuing to use the services of the Department of 202 General Services, Division of Engineering and Buildings, to perform the Building Official function. If 203 option (i) is selected, the individual hired as the University Building Official shall be a full-time 204 employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building 205 206 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building 207 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this 208 individual shall ensure that the VUSBC and accessibility requirements are met for that capital project 209 210 and that such capital project has been inspected by the State Fire Marshal or his designee as required. When serving as the University Building Official, such individual shall organizationally report directly 211 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it 212 213 shall fulfill the code review requirement by maintaining a review unit of licensed professional architects 214 or engineers supported by resources and staff who are certified by the Department of Housing and 215 Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose and 216 who shall review plans, specifications and documents for compliance with building codes and standards 217 and perform required inspections of work in progress and the completed capital project. No individual 218 licensed professional architect or engineer hired under the University's personnel system as a member of 219 the review unit or contracted with to perform these functions shall also perform other building 220 code-related design, construction, facilities-related project management or facilities management 221 functions for the University on the same capital project. 222

IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the University to assess the environmental, historic preservation, and 223 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts 224 225 to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic 226 preservation, and conservation requirements generally applicable to capital projects otherwise meeting 227 228 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of 229 \$300,000 or more. 230

X. BUILDING DEMOLITIONS.

231 It shall be the policy of the University to consider the environmental and historical aspects of any 232 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The 233 University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review 234 235 Board in accordance with State historic preservation requirements generally applicable to capital projects 236 in the Commonwealth. Further, for any property that was acquired or constructed with funding from a 237 general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, 238 general laws applicable to State owned property shall apply. 239

XI. BUILDING OR LAND ACQUISITIONS.

240 It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. 241 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure 242 243 that the project management system implemented pursuant to Section XIII below provides for a review 244 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent

245 purchaser would perform to the end that any building or land acquired by the University shall be 246 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to 247 the University and that the cost of the real property to be acquired, together with any contemplated 248 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is 249 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating 250 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies 251 pertaining to the acquisition of buildings or land for capital projects are carried out.

252 A. Environmental and Land Use Considerations.

253 It is the policy of the University to reasonably cooperate with each locality affected by the 254 acquisition. Such cooperation shall include but not be limited to furnishing any information that the 255 locality may reasonably request and reviewing any requests by the locality with regard to any such 256 acquisition. The University shall consider the zoning and comprehensive plan designation by the locality 257 of the building or land and surrounding parcels, as well as any designation by State or federal agencies 258 of historically or archeologically significant areas on the land. Nothing herein shall be construed as 259 requiring the University to comply with local zoning laws and ordinances. 260

B. Infrastructure and Site Condition.

261 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure 262 that, in the case of capital projects involving the acquisition of buildings or land, the project 263 management systems implemented under Section XIII below provide for a review of the following 264 matters prior to acquisition of the building or land: that any land can be developed for its intended 265 purpose without extraordinary cost; that an environmental engineer has been engaged by the University 266 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular 267 ingress and egress to serve the contemplated use of the building or land; that utilities and other services 268 to the land are adequate or can reasonably be provided or have been provided in the case of building 269 acquisitions; and that the condition and grade of the soils have been examined to determine if any 270 conditions exist that would require extraordinary site work or foundation systems.

C. Title and Survey.

272 A survey shall be prepared for any real property acquired, and an examination of title to the real 273 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title 274 insurance shall be procured from a title insurance company authorized to do business in the 275 Commonwealth. Based upon the survey and title examination or report, the President, acting through the 276 Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, 277 278 encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse 279 effect upon the University's ability to own, occupy, convey or develop the real property.

280 D. Appraisal.

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281 An appraisal shall be conducted of the real property to be acquired to determine its fair market value 282 and the consistency of the fair market value with the price agreed upon by the University.

XII. BUILDING OR LAND DISPOSITIONS.

The Board of Visitors shall approve the disposition of any building or land. Disposition of land or 284 285 buildings, the acquisition or construction of which was funded entirely or in part by a general fund 286 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 287 Board of Visitors approval and other approvals in accordance with general law applicable to 288 State-owned property and with the University's Enabling Legislation.

289 XIII. PROJECT MANAGEMENT SYSTEMS.

290 The President, acting through the Executive Vice President and Chief Operating Officer, shall 291 implement one or more systems for the management of capital projects for the University. The systems 292 may include the delegation of project management authority to appropriate University officials, including 293 a grant of authority to such officials to engage in further delegation of authority as the President, acting 294 through the Executive Vice President and Chief Operating Officer, deems appropriate.

295 The project management systems for capital projects shall be designed to ensure that such projects 296 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely 297 related subjects such as selection of architects or policies applicable to University buildings and grounds.

298 The project management systems may include one or more reporting systems applicable to capital 299 projects whereby University officials responsible for the management of such projects provide 300 appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction. 301

302 XIV. REPORTING REQUIREMENTS.

303 In addition to complying with any internal reporting systems contained in the University's project 304 management systems, as described in Section XIII above, the University shall comply with State 305 reporting requirements for those Major Capital Projects funded entirely or in part by a general fund

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306 appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project 307 constructs improvements on land, or renovates property, that originally was acquired or constructed in 308 whole or in part with a general fund appropriation for that purpose or proceeds from State Tax 309 Supported Debt, and such improvements or renovations are undertaken entirely with funds not 310 appropriated by the General Assembly and, if the cost of such improvements or renovations is 311 reasonably expected to exceed two million dollars, the decision to undertake such improvements or 312 renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to 313 314 the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project. 315 316 **ATTACHMENT 1**

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

Governed by Subchapter 3 of the

Restructured Higher Education Financial and Administrative Operations Act,

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

323 In accordance with the provisions of the Restructured Higher Education Financial and Administrative 324 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in 325 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the 326 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth 327 pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, 328 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and 329 construction by the Institution, excluding the University of Virginia Medical Center: 330

§ 1. Purpose. -

331 The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, 332 services, insurance, and construction by the Institution from nongovernmental sources, to include 333 governmental procurement that may or may not result in monetary consideration for either party. These 334 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the 335 Institution, the contractor, or some third party is providing the consideration. 336

§ 2. Scope of Procurement Authority. -

337 Subject to these Rules, and the Institution's continued substantial compliance with the terms and 338 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the 339 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and 340 exercise all of the authority relating to procurement of goods, services, insurance, and construction, 341 including but not limited to capital outlay-related procurement and information technology-related 342 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring 343 Act. 344

§ 3. Competition is the Priority. -

345 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all 346 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any 347 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's 348 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body 349 of the Institution that competition be sought to the maximum feasible degree, that procurement 350 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad 351 flexibility in fashioning details of such competition, that the rules governing contract awards be made 352 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing 353 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely 354 exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or 355 professional services. Professional services will be procured using a qualification-based selection process. 356 The criteria, factors, and basis for consideration of best value and the process for the consideration of 357 358 best value shall be as stated in the procurement solicitation. 359

§ 4. Definitions. -

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As used in these Rules:

361 "Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or 362 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition 363 364 "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, 365 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 366 367 partnership interest shall be deemed to be a voting security.

368 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 369 and various elements of required services that in total are optimal relative to the Institution's needs.

370 "Business" means any type of corporation, partnership, limited liability company, association, or sole 371 proprietorship operated for profit. 372

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

373 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 374 procured, specifying the factors that will be used in evaluating the proposal and containing or 375 incorporating by reference the other applicable contractual terms and conditions, including any unique 376 capabilities or qualifications that will be required of the contractor.

377 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 378 proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 379 380 can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and 381 382 may be published on other appropriate websites. In addition, proposals may be solicited directly from 383 potential contractors.

384 3. a. Procurement of professional services. The procurement of professional services for capital 385 projects shall be conducted using a qualification-based selection process. The Institution shall engage in 386 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 387 basis of initial responses and with emphasis on professional competence, to provide the required 388 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 389 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, 390 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors 391 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss 392 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where 393 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors 394 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this 395 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information 396 developed in the selection process to this point, the Institution shall select in the order of preference two 397 or more offerors whose professional qualifications and proposed services are deemed most meritorious. 398 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory 399 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the 400 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be 401 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a 402 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and 403 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly 404 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to 405 that offeror.

406 A contract for architectural or professional engineering services relating to construction projects may 407 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience 408 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 409 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 410 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 411 412 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 413 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 414 Request for Proposal stated the potential for a multi-vendor award.

415 Multiphase professional services contracts satisfactory and advantageous to the Institution for 416 environmental, location, design and inspection work regarding construction of infrastructure projects may 417 be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, 418 when completion of the earlier phases is necessary to provide information critical to the negotiation of a 419 fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the 420 Institution shall state the anticipated intended total scope of the project and determine in writing that the 421 nature of the work is such that the best interests of such Institution require awarding the contract.

422 b. Procurement of other than professional services. Selection shall be made of two or more offerors 423 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 424 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 425 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but 426 need not be the sole determining factor. After negotiations have been conducted with each offeror so 427 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 428 shall award the contract to that offeror. When the terms and conditions of multiple awards are so

429 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 430 Institution determine in writing and in its sole discretion that only one offeror has made the best 431 proposal, a contract may be negotiated and awarded to that offeror.

432 "Competitive sealed bidding" is a method of contractor selection, other than for professional services, 433 which includes the following elements:

434 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 435 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 436 437 qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of 438 439 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been 440 qualified under the criteria set forth in the first solicitation.

441 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 442 publication on the Department of General Services' central electronic procurement website. Public notice 443 also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall 444 445 include businesses selected from a list made available by the Department of Minority Business 446 Enterprise. 447

3. Public opening and announcement of all bids received.

448 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 449 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 450 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which 451 are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple 452 453 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

454 "Construction" means building, altering, repairing, improving or demolishing any structure, building 455 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to 456 457 coordinate and administer contracts for construction services for the benefit of the owner, and may also 458 include, if provided in the contract, the furnishing of construction services to the owner.

459 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 460 agreement with the Commonwealth of Virginia, a public institution of higher education of the 461 Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act. "Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to 462 463 464 both design and build the structure, roadway or other item specified in the contract.

465 "Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software. "Informality" 466 means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to 467 468 Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule 469 for the goods, services or construction being procured. "Multiphase professional services contract" means 470 a contract for the providing of professional services where the total scope of work of the second or 471 subsequent phase of the contract cannot be specified without the results of the first or prior phase of the 472 contract.

473 "Nonprofessional services" means any services not specifically identified as professional services in 474 the definition of professional services and includes small construction projects valued not over \$1 475 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall 476 still apply to professional services for such small construction projects.

477 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at 478 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or 479 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the 480 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who 481 would have been eligible and qualified to submit a bid or proposal had the contract been procured 482 through competitive sealed bidding or competitive negotiation.

483 "Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 484 485 dentistry, medicine, optometry, pharmacy or professional engineering.

486 "Public body" means any legislative, executive or judicial body, agency, office, department, authority, 487 post, commission, committee, institution, board or political subdivision created by law to exercise some 488 sovereign power or to perform some governmental duty, and empowered by law to undertake the 489 activities described in these Rules.

490 "Public contract" means an agreement between the Institution and a nongovernmental source that is

491 enforceable in a court of law.

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

495 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects496 to the Invitation to Bid.

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

499 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction500 adopted by the governing body of the Covered Institution.

501 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified 502 goods or nonprofessional services through real-time electronic bidding, with the award being made to 503 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 504 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 505 established for bid opening.

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

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

§ 5. Methods of procurement. -

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

516 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 517 shall be used for design services.

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

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

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

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

525 3. By the Institution for the construction of highways and any draining, dredging, excavation, grading 526 or similar work upon real property.

527 E. Upon a determination in writing that there is only one source practicably available for that which 528 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed 529 bidding or competitive negotiation. The writing shall document the basis for this determination. The 530 Institution shall issue a written notice stating that only one source was determined to be practicably 531 available, and identifying that which is being procured, the contractor selected, and the date on which 532 the contract was or will be awarded. This notice shall be posted in a designated public area, which may 533 be the Department of General Services' website for the Commonwealth's central electronic procurement 534 system, or published in a newspaper of general circulation on the day the Institution awards or 535 announces its decision to award the contract, whichever occurs first. Public notice shall also be 536 published on the Department of General Services' website for the Commonwealth's central electronic 537 procurement system and may be published on other appropriate websites.

538 F. In case of emergency, a contract may be awarded without competitive sealed bidding or 539 competitive negotiation; however, such procurement shall be made with such competition as is 540 practicable under the circumstances. A written determination of the basis for the emergency and for the 541 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 542 written notice stating that the contract is being awarded on an emergency basis, and identifying that 543 which is being procured, the contractor selected, and the date on which the contract was or will be 544 awarded. This notice shall be posted in a designated public area, which may be the Department of 545 General Services' website for the Commonwealth's central electronic procurement system, or published 546 in a newspaper of general circulation on the day the Institution awards or announces its decision to 547 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic 548 549 procurement system and other appropriate websites.

550 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 551 sealed bids or competitive negotiation for single or term contracts for goods and services other than 564

552 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; 553 however, such small purchase procedures shall provide for competition wherever practicable.

554 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 555 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases 556 is not expected to exceed \$50,000; however such small purchase procedures shall provide for 557 competition wherever practicable.

558 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase 559 of goods, products or commodities from a public auction sale is in the best interests of the public, such 560 items may be purchased at the auction, including online public auctions. The writing shall document the 561 basis for this determination.

J. The purchase of goods or nonprofessional services, but not construction or professional services, 562 563 may be made by reverse auctioning.

§ 6. Cooperative procurement.

565 A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not 566 provide goods and services to the Institution that meet its business goals and objectives, the Institution is 567 568 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on 569 behalf of or in conjunction with public bodies, public or private health or educational institutions, other 570 public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or 571 institutions or group purchasing organizations of the several states, territories of the United States, or the 572 573 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce 574 administrative expense in any acquisition of goods and services, other than professional services. The 575 Institution may purchase from any authority, department, agency, institution, city, county, town, or other 576 political subdivision of the Commonwealth's contract even if it did not participate in the request for 577 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the 578 procurement was being conducted on behalf of other public bodies. In such instances, deviation from the 579 procurement procedures set forth in these Rules and the administrative policies and procedures 580 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of 581 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic 582 procurement system, including the requirement for payment of applicable fees. Nothing herein shall 583 prohibit the payment by direct or indirect means of any administrative fee that will allow for 584 participation in any such arrangement.

585 B. In circumstances where statewide contracts for goods and services, including information 586 technology and telecommunications goods and services, do not provide goods and services to meet the 587 Institution's business goals and objectives, and as authorized by the United States Congress and 588 consistent with applicable federal regulations, and provided the terms of the contract permit such 589 purchases:

590 1. The Institution may purchase goods and nonprofessional services, from a United States General 591 Services Administration contract or a contract awarded by any other agency of the United States 592 government; and

593 2. The Institution may purchase telecommunications and information technology goods and 594 nonprofessional services from a United States General Services Administration contract or a contract 595 awarded by any other agency of the United States government. 596

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

597 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed **598** price design-build basis or construction management basis in accordance with the provisions of this 599 section.

600 B. Procurement of construction by the design-build or construction management method shall be a 601 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 602 qualifications. Based upon the information submitted and any other relevant information which the 603 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 604 selected by the Commonwealth and requested to submit proposals. 605

§ 8. Modification of the contract. -

606 A. A contract awarded by the Institution may include provisions for modification of the contract 607 during performance, but no fixed-price contract may be increased by more than 25% of the amount of 608 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, 609 610 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 611 an error in its bid or offer.

B. The Institution may extend the term of an existing contract for services to allow completion of 612 613 any work undertaken but not completed during the original term of the contract.

614 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications. 615

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

617 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 618 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis 619 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 620 Institution shall include businesses selected from a list made available by the Department of Minority 621 Business Enterprise.

622 B. The Institution shall establish programs consistent with this section to facilitate the participation of 623 small businesses and businesses owned by women and minorities in procurement transactions. The 624 programs established shall be in writing and shall include cooperation with the Department of Minority 625 Business Enterprise, the United States Small Business Administration, and other public or private 626 agencies. The Institution shall submit annual progress reports on minority business procurement to the 627 Department of Minority Business Enterprise.

628 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 629 analysis that documents a statistically significant disparity between the availability and utilization of 630 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 631 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 632 law.

633 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 634 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 635 that employing ex-offenders on the specific contract is not in its best interest.

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

The Institution shall include in every contract of more than \$10,000 the following provisions: 637

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

639 a. The contractor will not discriminate against any employee or applicant for employment because of 640 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to 641 discrimination in employment, except where there is a bona fide occupational qualification reasonably 642 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, 643 available to employees and applicants for employment, notices setting forth the provisions of this 644 nondiscrimination clause.

645 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 646 contractor, will state that such contractor is an equal opportunity employer.

647 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 648 shall be deemed sufficient for the purpose of meeting the requirements of this section.

649 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 650 651 subcontractor or vendor. 652

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

653 The Institution shall include in every contract over \$10,000 the following provisions: During the **654** performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 655 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 656 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 657 658 workplace and specifying the actions that will be taken against employees for violations of such 659 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 660 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 661 662 binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the "performance of work **663** 664 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 665 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 666 dispensation, possession or use of any controlled substance or marijuana during the performance of the 667 contract.

§ 12. Use of brand names. -

668 669 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or 670 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be 671 deemed to convey the general style, type, character, and quality of the article desired. Any article that 672 the Institution in its sole discretion determines to be the equal of that specified, considering quality, 673 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

674 § 13. Comments concerning specifications. - 675 The Institution shall establish procedures whereby comments concerning specifications or other
676 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the
677 time set for receipt of bids or proposals or award of the contract.

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

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

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

686 The application form used in such process shall set forth the criteria upon which the qualifications of 687 prospective contractors will be evaluated. The application form shall request of prospective contractors 688 only such information as is appropriate for an objective evaluation of all prospective contractors 689 pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to 690 request, by checking the appropriate box, that all information voluntarily submitted by the contractor 691 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the 692 provisions of subsection D of § 34 of these Rules.

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

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

703 A decision by the Institution denying prequalification under the provisions of this subsection shall be 704 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

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

707 1. The contractor does not have sufficient financial ability to perform the contract that would result 708 from such procurement. If a bond is required to ensure performance of a contract, evidence that the 709 contractor can acquire a surety bond from a corporation included on the United States Treasury list of 710 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to 711 establish the financial ability of the contractor to perform the contract resulting from such procurement;

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

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

717 4. The contractor has been in substantial noncompliance with the terms and conditions of prior 718 construction contracts with the Institution without good cause. If the Institution has not contracted with a 719 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor 720 has been in substantial noncompliance with the terms and conditions of comparable construction 721 contracts with another public body without good cause.

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

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

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

734 7. The contractor failed to provide to the Institution in a timely manner any information requested by735 the Institution relevant to subdivisions 1 through 6 of this subsection.

736 § 15. Negotiation with lowest responsible bidder. -

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737 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as 738 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the 739 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. 740 However, the negotiation may be undertaken only under conditions and procedures described in writing 741 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

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

743 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or 744 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 745 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 746 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 747 particular responsive and responsible bidder or offeror.

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B. The Institution may waive informalities in bids. § 17. Exclusion of insurance bids prohibited. -

750 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance 751 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be 752 excluded from presenting an insurance bid proposal to the Institution in response to a request for 753 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a 754 prospective insurer pursuant to § 18.

§ 18. Debarment. -

756 Prospective contractors may be debarred from contracting for particular types of supplies, services, 757 insurance or construction, for specified periods of time. Any debarment procedure shall be established in 758 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a 759 contractor's unsatisfactory performance for the Institution. 760

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

761 A. The Institution may implement a purchase program for recycled goods and may coordinate its 762 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 10.1-1425.8 763 of the Code of Virginia, and §§ 20 and 22 of these Rules.

764 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets 765 Development Council, shall advise the Institution concerning the designation of recycled goods.

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

767 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 768 769 decided by lot.

770 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 771 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 772 lowest responsive and responsible bidder who is a resident of Virginia.

773 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where 774 goods are being offered, and existing price preferences have already been taken into account, preference 775 shall be given to the bidder whose goods contain the greatest amount of recycled content. 776

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

777 In determining the award of any contract for coal to be purchased for use in the Institution with state 778 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest 779 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more 780 than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined 781 elsewhere. 782

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

783 A. In determining the award of any contract for paper and paper products to be purchased for use by 784 the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for 785 the purpose intended, so long as the price is not more than 10% greater than the price of the low 786 responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

787 B. For purposes of this section, recycled paper and paper products means any paper or paper 788 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247. 789

§ 23. Withdrawal of bid due to error. -

790 A. A bidder for a public construction contract, other than a contract for construction or maintenance 791 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 792 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 793 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 794 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made 795 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can 796 be clearly shown by objective evidence drawn from inspection of original work papers, documents and 797 materials used in the preparation of the bid sought to be withdrawn.

798 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from 799 consideration if the price bid would have been substantially lower than the other bids due solely to the 800 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 801 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 802 objective evidence drawn from inspection of original work papers, documents and materials used in the 803 preparation of the bid sought to be withdrawn.

804 One of the following procedures for withdrawal of a bid shall be selected by the Institution and 805 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 806 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 807 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid 808 809 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 810 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 811 812 813 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined 814 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 815 816 period has elapsed. The mistake shall be proved only from the original work papers, documents and 817 materials delivered as required herein.

818 B. The Institution may establish procedures for the withdrawal of bids for other than construction 819 contracts.

820 C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the 821 822 withdrawing bidder is more than 5%.

823 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to 824 be the low bid.

825 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or 826 labor to or perform any subcontract or other work agreement for the person or firm to whom the 827 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for 828 which the withdrawn bid was submitted.

829 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 830 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid 831 price, provided such bidder is a responsible and responsive bidder. 832

§ 24. Contract Pricing Arrangements. -

A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 833 834 basis that is not prohibited by these Rules.

835 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall 836 be awarded on the basis of cost plus a percentage of cost.

837 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of 838 claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or 839 part as a percentage of such claims, shall not be prohibited by this section. 840

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

841 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage 842 843 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the code of 844 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 845 evidence of such coverage.

846 B. The Department of General Services shall provide the form to the Institution. Failure of the 847 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 848 of subsection A.

849 C. No subcontractor shall perform any work on a construction project of the Institution unless he has 850 obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 851 852 Virginia. 853

§ 26. Retainage on construction contracts. -

854 A. In any contract issued by the Institution for construction that provides for progress payments in 855 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% 856 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment. 857

858 B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section. 859

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

867 B. Subsection A shall not be construed to render void any provision of a public construction contract 868 awarded by the Institution that:

869 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the870 contractor, or its subcontractors, agents or employees;

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

872 3. Provides for liquidated damages for delay; or

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

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

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

§ 28. Bid bonds. -

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

892 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for893 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

894 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids895 or proposals for construction contracts anticipated to be less than \$1 million.

896 § 29. Performance and payment bonds. -

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

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

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

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

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

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

917 E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds918 for construction contracts below \$1 million.

919 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a920 payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor

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921 conditioned upon the payment to all persons who have and fulfill contracts that are directly with the 922 subcontractor for performing labor and furnishing materials in the prosecution of the work provided for

923 in the subcontract.

924 § 30. Alternative forms of security. -

925 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 926 escrow in the face amount required for the bond.

927 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the 928 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 929 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 930 be granted only upon a determination that the alternative form of security proffered affords protection to 931 the Institution equivalent to a corporate surety's bond.

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

933 The Institution may require bid, payment, or performance bonds for contracts for goods or services if 934 provided in the Invitation to Bid or Request for Proposal.

935 § 32. Action on performance bond. -

936 No action against the surety on a performance bond shall be brought by the Institution unless 937 brought within one year after (i) completion of the contract, including the expiration of all warranties 938 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action. 939

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

940 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 941 material in accordance with the contract documents in furtherance of the work provided in any contract 942 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the 943 materials for which he claims payment, may bring an action on the payment bond to recover any 944 945 amount due him for the labor or material. The obligee named in the bond need not be named a party to 946 the action.

947 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 948 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's 949 payment bond only if he has given written notice to the contractor within 180 days from the day on 950 which the claimant performed the last of the labor or furnished the last of the materials for which he 951 claims payment, stating with substantial accuracy the amount claimed and the name of the person for 952 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be 953 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at 954 any place where his office is regularly maintained for the transaction of business. Claims for sums 955 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the 956 time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the 957 958 person bringing such action last performed labor or last furnished or supplied materials.

959 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 960 it is in writing, signed by the person whose right is waived, and executed after such person has 961 performed labor or furnished material in accordance with the contract documents. 962

§ 34. Public inspection of certain records.

963 A. Except as provided in this section, all proceedings, records, contracts and other public records 964 relating to procurement transactions shall be open to the inspection of any citizen, or any interested 965 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et 966 seq.).

967 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 968 shall not be open to public inspection.

969 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 970 bid records within a reasonable time after the opening of all bids but prior to award, except in the event 971 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid 972 records shall be open to public inspection only after award of the contract.

973 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect 974 proposal records within a reasonable time after the evaluation and negotiations of proposals are 975 completed but prior to award, except in the event that the Institution decides not to accept any of the 976 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only 977 after award of the contract.

978 E. Any inspection of procurement transaction records under this section shall be subject to reasonable 979 restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection 980 981 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 **982** shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the

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983 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission 984 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the 985 reasons why protection is necessary.

986 § 35. Exemption for certain transactions. -

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

988 1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by 991 § 23-76.1.

992 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the993 Institution. However, such purchase procedures shall provide for competition where practicable.

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

998 4. The University of Virginia Medical Center.

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

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

1008 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

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

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

1017 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this 1018 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 1019 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 1020 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of 1021 religious freedom by the recipients of such goods, services, or disbursements.

1022 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and 1023 purchase orders prominently display a nondiscrimination statement indicating that it does not 1024 discriminate against faith-based organizations.

1025 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any 1026 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on 1027 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 1028 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other 1029 organizations that contract with public bodies to account for the use of the funds provided; however, if 1030 the faith-based organization segregates public funds into separate accounts, only the accounts and 1031 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) 1032 shall be construed to supersede or otherwise override any other applicable state law.

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

1037 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from
1038 any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization
1039 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular
1040 religion.

1041 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 1042 to a contract between the Institution and a faith-based organization, objects to the religious character of 1043 the faith-based organization from which the individual receives or would receive the goods, services, or

1044 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 1045 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

1046 The Institution shall provide to each individual who applies for or receives goods, services, or 1047 disbursements provided pursuant to a contract between the Institution and a faith-based organization a 1048 notice in **bold** face type that states: "Neither the Institution's selection of a charitable or faith-based 1049 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 1050 charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a 1051 1052 religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please 1053 discuss the complaint with your provider or notify the appropriate person as indicated in this form. 1054

1055 § 37. Exemptions from competition for certain transactions. -

1056 The Institution may enter into contracts without competition, as that term is described in subsections 1057 A through J of § 5 (Methods of procurement) of these Rules, for: 1058

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

1059 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 1060 Blind and Vision Impaired;

b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported 1061 1062 employment services serving the handicapped;

1063 c. Private educational institutions; or

1064 d. Other public educational institutions.

1065 2. Speakers and performing artists;

1066 3. Memberships and Association dues:

4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 1067 1068 goods or services by the Institution;

1069 5. Group travel in foreign countries; 1070

6. Conference facilities and services;

7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, 1071 1072 registration and tournament fees:

8. Royalties: or

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1074 9. The purchase of legal services, provided that the Office of the Attorney General has been 1075 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

1076 10. Maintenance contract renewals for scientific research equipment and software, provided that the 1077 institution has posted the renewal to eVa and documented that there was only one response or less and 1078 such documentation includes a statement signed by the buyer indicating that no firm other than the 1079 original manufacturer/developer offers the service.

§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain 1080 1081 transactions; limitations. -

1082 The Institution may enter into contracts for insurance or electric utility service without competitive 1083 sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and 1084 welfare of and developing close relationships with similar public bodies, provided such association has 1085 1086 procured the insurance or electric utility services by use of competitive principles and provided that the 1087 Institution has made a determination in advance after reasonable notice to the public and set forth in 1088 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the 1089 public. The writing shall document the basis for this determination.

1090 § 39. Definitions. -

As used in §§ 39 through 46, unless the context requires a different meaning: "Contractor" means the entity that has a direct contract with the Institution. 1091

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1093 "Debtor" means any individual, business, or group having a delinquent debt or account with any state 1094 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

1095 "Payment date" means either (i) the date on which payment is due under the terms of a contract for 1096 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or 1097 1098 services by the Institution..

1099 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to 1100 whom the contract was awarded or to any subcontractor in the performance of the work provided for in 1101 such contract. 1102

§ 40. Exemptions. -

1103 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any 1104 public utility tariffs prescribed by the State Corporation Commission.

1105 § 41. Retainage to remain valid. -

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- 1106 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall1107 remain valid.
- **1108** § 42. Prompt payment of bills by the Institution. -
- 1109 A. The Institution shall promptly pay for the completely delivered goods or services by the required 1110 payment date.
- **1111** Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.
- 1113 B. Separate payment dates may be specified for contracts under which goods or services are provided 1114 in a series of partial deliveries or executions to the extent that such contract provides for separate 1115 payment for such partial delivery or execution.
- 1116 § 43. Defect or impropriety in the invoice or goods and/or services received. -
- 1117 In instances where there is a defect or impropriety in an invoice or in the goods or services received, 1118 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would 1119 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the 1120 invoice or the goods or services.
- 1121 § 44. Date of postmark deemed to be date payment is made. -
- 1122 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date 1123 payment is made for purposes of these Rules.
- 1124 § 45. Payment clauses to be included in contracts. -

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- Any contract awarded by the Institution shall include:
- 1126 1. A payment clause that obligates the contractor to take one of the two following actions within
 1127 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
 1128 subcontractor under that contract:
- a. Pay the subcontractor for the proportionate share of the total payment received from the Institutionattributable to the work performed by the subcontractor under that contract; or
- b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of thesubcontractor's payment with the reason for nonpayment.
- 1133 2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
- 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.
- 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interestshall accrue at the rate of 1% per month."
- 1142 Any such contract awarded shall further require the contractor to include in each of its subcontracts a 1143 provision requiring each subcontractor to include or otherwise be subject to the same payment and 1144 interest requirements with respect to each lower-tier subcontractor.
- A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause
 in this section shall not be construed to be an obligation of the Institution. A contract modification shall
 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement
 claim shall not include any amount for reimbursement for the interest charge.
- 1149 § 46. Interest penalty; exceptions. -
- A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the
 Institution to a vendor that remain unpaid after seven days following the payment date. However,
 nothing in this section shall affect any contract providing for a different rate of interest, or for the
 payment of interest in a different manner.
- B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.
- 1159 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 1160 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 1161 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 1162 exception from the interest penalty provided by this subsection shall apply only to that portion of a 1163 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 1164 the disagreement.
- 1165 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 1166 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a

contractor from receiving interest on such funds under an approved escrow agreement. 1167

1168 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or 1169 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 1170 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 1171 1172 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 1173 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days 1174 following the payment date. 1175

§ 47. Ineligibility. -

1176 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 1177 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the 1178 1179 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 1180 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 1181 requested by the bidder within five business days after receipt of the notice.

1182 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 1183 challenging the evaluation. The Institution shall issue its written determination of disgualification or 1184 ineligibility based on all information in the possession of the Institution, including any rebuttal 1185 information, within five business days of the date the Institution received such rebuttal information.

1186 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 1187 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 1188 evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The 1189 1190 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 1191 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 1192 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 1193 in § 54.

1194 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 1195 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 1196 restoration of eligibility. 1197

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

1198 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final 1199 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 1200 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 1201 instituting legal action as provided in § 54.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, 1202 1203 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 1204 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released 1205 only upon a final determination that the bidder was entitled to withdraw the bid.

1206 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 1207 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 1208 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to 1209 Bid, the sole relief shall be withdrawal of the bid. 1210

§ 49. Determination of nonresponsibility. -

1211 A. Following public opening and announcement of bids received on an Invitation to Bid, the 1212 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed 1213 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution 1214 1215 1216 determines that the apparent low bidder is not responsible, it shall proceed as follows:

1217 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 1218 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 1219 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that 1220 relate to the determination, if so requested by the bidder within five business days after receipt of the 1221 notice.

1222 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 1223 challenging the evaluation. The Institution shall issue its written determination of responsibility based on 1224 all information in the possession of the Institution, including any rebuttal information, within five 1225 business days of the date the Institution received the rebuttal information. At the same time, the 1226 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

1227 3. Such notice shall state the basis for the determination, which shall be final unless the bidder 1228 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures

meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal actionas provided in § 54.

1231 The provisions of this subsection shall not apply to procurements involving the prequalification of
1232 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such
1233 bidders are not responsible.

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

1240 If it is determined that the decision of the Institution was not an honest exercise of discretion, but 1241 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state 1242 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has 1243 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

1244 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract
1245 shall proceed under this section, and may not protest the award or proposed award under the provisions
1246 of § 50 of these Rules.

1247 D. Nothing contained in this section shall be construed to require the Institution, when procuring by 1248 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 1249 to be the most advantageous.

1250 § 50. Protest of award or decision to award. -

1251 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 1252 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 1253 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 1254 notice of the award or the announcement of the decision to award shall be given by the Institution in 1255 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 1256 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 1257 protest the award or decision to award such contract shall submit the protest in the same manner no 1258 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 1259 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part 1260 upon information contained in public records pertaining to the procurement transaction that are subject 1261 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 1262 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at 1263 such later time as provided in this section. No protest shall lie for a claim that the selected bidder or 1264 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest 1265 and the relief sought. The Institution or designated official shall issue a decision in writing within 10 1266 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 1267 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as 1268 1269 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the 1270 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of 1271 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 1272 standards of § 55 of these Rules.

1273 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the 1274 sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to 1275 comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or 1276 capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but 1277 performance has not begun, the performance of the contract may be enjoined. Where the award has been 1278 made and performance has begun, the Institution may declare the contract void upon a finding that this 1279 action is in the best interest of the public. Where a contract is declared void, the performing contractor 1280 shall be compensated for the cost of performance up to the time of such declaration. In no event shall 1281 the performing contractor be entitled to lost profits.

1282 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing
1283 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to
1284 award was based on fraud or corruption or on an act in violation of these Rules, the Institution,
1285 designated official or appeals board may enjoin the award of the contract to a particular bidder.

1286 § 51. Effect of appeal upon contract. -

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted ingood faith in accordance with these Rules shall not be affected by the fact that a protest or appeal hasbeen filed.

1290 § 52. Stay of award during protest. -

1291 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event 1292 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided 1293 in § 54, no further action to award the contract shall be taken unless there is a written determination that 1294 proceeding without delay is necessary to protect the public interest or unless the bid or offer would 1295 expire. 1296

§ 53. Contractual disputes. -

1297 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 1298 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be 1299 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing 1300 herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of 1301 1302 claims shall not delay payment of amounts agreed due in the final payment.

1303 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 1304 Such procedure, which may be contained in the contract or may be specifically incorporated into the 1305 contract by reference and made available to the contractor, shall establish a time limit for a final 1306 decision in writing by the Institution. If the Institution has established administrative procedures meeting 1307 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically 1308 incorporated in the contract by reference and made available to the contractor. The Institution may 1309 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 1310 (ADR) as an administrative procedure.

1311 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's 1312 1313 decision on the claim, unless the Institution fails to render such decision within the time specified in the 1314 contract.

1315 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within 1316 six months of the date of the final decision on the claim by the Institution by invoking administrative 1317 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting 1318 legal action as provided in § 54. 1319

§ 54. Legal actions. -

1320 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from 1321 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that 1322 1323 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest 1324 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of 1325 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in 1326 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in 1327 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously 1328 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a 1329 responsible bidder, the court may direct the Institution to award the contract to such bidder in 1330 accordance with the requirements of this section and the Invitation to Bid.

1331 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the 1332 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes 1333 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary 1334 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, 1335 or the terms or conditions of the Invitation to Bid.

1336 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole 1337 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or 1338 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit 1339 court challenging a proposed award or the award of a contract, which shall be reversed only if the 1340 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but 1341 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state 1342 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

1343 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 1344 of reasonable security to protect the Institution.

1345 E. A contractor may bring an action involving a contract dispute with the Institution in the 1346 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be 1347 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of 1348 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of 1349 Accounts.

1350 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of 1351 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,

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1352 the procedures shall be exhausted prior to instituting legal action concerning the same procurement 1353 transaction unless the Institution agrees otherwise.

1354 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a 1355 contractor.

1356 § 55. Administrative appeals procedure. -

1357 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 1358 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 1359 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 1360 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 1361 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 1362 disinterested person or panel, the opportunity to present pertinent information and the issuance of a 1363 written decision containing findings of fact. The disinterested person or panel shall not be an employee 1364 of the governmental entity against whom the claim has been filed. The findings of fact shall be final and 1365 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so 1366 grossly erroneous as to imply bad faith; or (c) in the case of denial of pregualification, the findings were 1367 not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. 1368 No determination on an issue of law shall be final if appropriate legal action is instituted in a timely 1369 manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in 1370 establishing an Alternative Dispute Resolution (ADR) procedure.

1371 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 1372 judicial review if such action is brought within 30 days of receipt of the written decision.

1373 § 56. Alternative dispute resolution. -

1374 The Institution may enter into agreements to submit disputes arising from contracts entered into 1375 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution 1376 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of 1377 Virginia, as applicable. 1378

§ 57. Ethics in public contracting. -

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The Institution and its governing body, officers and employees shall be governed by the Ethics in 1379 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of 1380 1381 Chapter 43 of Title 2.2 of the Code of Virginia. 1382

ATTACHMENT 2

Memorandum of Agreement

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

ERP/SciQuest Implementation with eVA

1386 The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute and State University 1387 (University) agree to the following:

1388 I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system 1389 (Banner).

1390 II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. 1391 1392 Longer term a more real-time option may be mutually agreed by the Department of General 1393 Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between 1394 the ERP and eVA systems.

1395 III. The University may request that eVA contract vendors provide a version of their contract catalog 1396 for loading into ERP/SciOuest. Should the vendor indicate a preference to only provide its catalog 1397 through eVA, then the University will access these catalogs as described in item B8 of the Metrics 1398 section of this document. In any event, the University shall be responsible for payment of all eVA 1399 transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses 1400 to issue to unregistered and registered vendors through eVA.

1401 IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is 1402 understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from 1403 mandatory processing through eVA.

1404 V. In lieu of processing individual orders for requirements through eVA, a more efficient 1405 administrative approach is to establish a blanket or standing order. The University is authorized to use 1406 such an approach where it makes good business sense. The University will ensure vendors understand 1407 that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the 1408 transaction fee will be based on the total order amount, and the vendor is required to pay the total 1409 transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule 1410 specified in the order.

1411 VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting 1412 electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other

1413 orders to vendors. Whereas the University maintains a University specific electronic vendor record that 1414 identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA 1415 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the 1416 eVA Business Plan as follows:

A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the 1417 1418 appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that 1419 includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will 1420 pay the eVA transaction fees for these orders.

1421 B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the 1422 appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, 1423 e-mail address and phone number." The University agrees that, for these orders, it will resolve any 1424 1425 vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether 1426 such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or 1427 CGI-AMS. 1428

The University further agrees that:

1429 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 1430 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed 1431 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

1432 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 1433 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

1434 3. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 1435 1436 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

1437 VII. The University will not require separate vendor registrations as a prerequisite for responding to 1438 University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 1439 1440 information will be supported in eVA in such a way as to provide CoVA verified vendor information to 1441 entities. The University will have the option to receive a subset of vendor related data. Until an 1442 enterprise W-9 process is established, the University will be responsible for collection of W-9 information. 1443

1444 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at 1445 least six (6) months prior to change or as soon as any new plan is proposed) with the University 1446 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that 1447 may affect the technical changes described herein.

1448 IX. Integration of the University's electronic procurement solution with the University's ERP is the 1449 responsibility of the University. The solution must provide for orders, change orders and cancellations. 1450 Guidelines

1451 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for 1452 electronic procurement between the University and the CoVA.

1453 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 1454 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

1455 3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data 1456 Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt 1457 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements 1458 1459 for unregistered vendor orders.

1460 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA 1461 standard format.

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

6. eVA Interface standard does not currently support PCard orders; however these orders may be 1463 1464 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor. Schedule

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1466 The University shall implement this agreement no later than July 2006.

1467 Metrics

1468 A. The University shall comply with the following Governor's eVA Management Objective:

1469 Ninety-fiveEighty percent of all nonexempt orders to be processed by eVA. Includes nonexempt orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to 1470 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For 1471 1472 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by 1473 DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be 1474 reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

1475 B. The University shall meet the following management objectives for electronic procurement:

1476 1. Provide end users, including purchase-card users, access to an electronic system for buying;

1477 2. Conduct business with eVA registered vendors whenever possible;

1478 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically 1479 using eVA;

1480 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar 1481 value, that include commodity codes, complete item descriptions, quantities, and unit prices;

1482 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five 1483 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and 1484 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the 1485 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to 1486 monitor the usage of confirming orders with the objective of reducing their numbers to the extent 1487 possible.

1488 The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes related to payment of eVA transaction fees, by working directly with the vendor whether such 1489 1490 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or 1491 CGI-AMS.

1492 The University further agrees that:

1493 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 1494 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed 1495 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

1496 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 1497 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

1498 c. In the event the University does not provide resolution notification to the eVA Business Manager 1499 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 1500 reversing disputed transaction fees from the vendor to the University and the University will pay the fee. 1501 6. Timely process electronic change orders and cancellations;

1502 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as 1503 specifically exempted by DPS;

1504 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to 1505 end users using the ERP/SciQuest Integration system. The University will be responsible for the 1506 accuracy of contract catalog pricing loaded into the ERP/SciQuest;

1507 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post 1508 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 1509 below):

1510 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate 1511 commodities, when such are identified; 1512

11. Complete and certify the monthly eVA Dashboard Report; and 1513

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

1514 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.

D. The University shall assure that payments to CGI-AMS are current. 1515

1516 1517 EXHIBIT F 1518 1519 MANAGEMENT AGREEMENT 1520 BETWEEN 1521 THE COMMONWEALTH OF VIRGINIA 1522 AND 1523 VIRGINIA POLYTECHNIC INSTITUTE 1524 AND STATE UNIVERSITY 1525 PURSUANT TO 1526 THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS 1527 1528 ACT OF 2005 1529 1530 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT 1531 1532 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE 1533 AND STATE UNIVERSITY 1534 1535 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

1536 I. PREAMBLE.

1537 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 1538 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting 1539 additional authority to institutions of higher education for financial operations and management, subject 1540 to the adoption of policies by their governing boards and the approval of management agreements to be 1541 negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board 1542 of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations 1543 and management.

1544 This Policy is intended to cover the authority that may be granted to the University pursuant to 1545 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the 1546 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act 1547 and the University's Enabling Legislation, are not affected by this Policy. 1548

II. DEFINITIONS.

1549 As used in this policy, the following terms shall have the following meanings, unless the context 1550 requires otherwise:

1551 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 1552 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and 1553 1554 State University.

1555 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with 1556 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has 1557 entered into a Management Agreement with the Commonwealth to be governed by the provisions of 1558 Subchapter 3 of the Act.

1559 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of 1560 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions 1561 of the University.

1562 "Effective Date" means the effective date of the initial Management Agreement between the 1563 University and the Commonwealth.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act 1564 1565 between the University and the Commonwealth of Virginia.

1566 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 1567 1568 general government funds, as defined in the December 20, 2004 Report to the Governor and General 1569 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

1570 "University" means Virginia Polytechnic Institute and State University, consisting of the University 1571 Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station

1572 Division (State Agency 229).

III. SCOPE OF POLICY.

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1574 This Policy applies to the University's responsibility for management, investment and stewardship of 1575 all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, 1576 1577 and internal controls adequate to protect and account for the University's financial resources.

1578 Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the 1579 benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative 1580 Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the 1581 Agriculture Experiment Station Division shall not receive any additional independent financial operations 1582 and management authority as a result of this Management Agreement beyond the independent financial 1583 operations and management authority that it had prior to the Effective Date of the University's initial 1584 Management Agreement with the Commonwealth or that it may be granted by law in the future. 1585

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

1586 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 1587 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 1588 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 1589 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 1590 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 1591 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 1592 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 1593 and procedures. 1594

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall 1595 1596 continue to be authorized by the Board to maintain existing and implement new policies governing the 1597 management of University financial resources. These policies shall continue to (i) ensure compliance

1598 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting 1599 principles employed by the Commonwealth, including the use of fund accounting principles, with regard 1600 to the establishment of the underlying accounting records of the University and the allocation and 1601 utilization of resources within the accounting system, including the relevant guidance provided by the 1602 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and 1603 proper use of funds from specific types of fund sources, (iii) provide adequate risk management and 1604 internal controls to protect and safeguard all financial resources, including moneys transferred to the 1605 University pursuant to a general fund appropriation, and ensure compliance with the requirements of the 1606 Appropriation Act.

1607 The financial management system shall continue to include a financial reporting system to satisfy 1608 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 1609 as specified in the related State Comptroller's Directives, and the University's separately audited financial 1610 statements. To ensure observance of limitations and restrictions placed on the use of the resources 1611 available to the University, the accounting and bookkeeping system of the University shall continue to 1612 be maintained in accordance with the principles prescribed for governmental organizations by the 1613 Governmental Accounting Standards Board.

1614 In addition, the financial management system shall continue to provide financial reporting for the 1615 President, acting through the Executive Vice President and Chief Operating Officer, and the Board of 1616 Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon 1617 the Effective Date of the initial Management Agreement between the University and the Commonwealth, 1618 except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the 1619 University shall not be required to record its financial transactions in the Commonwealth's Accounting 1620 and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its 1621 financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in 1622 addition to CARS, but shall have its own financial reporting system. The University's financial reporting 1623 system shall provide (i) summary monthly reports for State agencies including, but not limited to, the 1624 Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and 1625 Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for 1626 Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on 1627 Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible 1628 with the Commonwealth's accounting system, as may be requested by the requesting State agency, and 1629 (ii) such other special reports as may be requested from time to time.

1630 VI. FINANCIAL MÁNAGEMENT POLICIES.

1631 The President, acting through the Executive Vice President and Chief Operating Officer, shall create 1632 and implement any and all financial management policies necessary to establish a financial management 1633 system with adequate risk management and internal control processes and procedures for the effective 1634 protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but 1635 1636 rather will focus on the internal operations of the University's financial management. These policies shall 1637 include, but need not be limited to, the development of a tailored set of finance and accounting practices 1638 that seek to support the University's specific business and administrative operating environment in order 1639 to improve the efficiency and effectiveness of its business and administrative functions. In general, the 1640 system of independent financial management policies shall be guided by the general principles contained 1641 in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management 1642 and internal accounting controls to ensure University financial resources are properly safeguarded and 1643 that appropriate stewardship of public funds is obtained through management's oversight of the effective 1644 and efficient use of such funds in the performance of University programs.

1645 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the
1646 University shall continue to follow the Commonwealth's accounting policies until such time as specific
1647 alternate policies can be developed, approved and implemented. Such alternate policies shall include
1648 applicable accountability measures and shall be submitted to the State Comptroller for review and
1649 comment before they are implemented by the University.

1650 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

1651 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the
1652 University shall have the power and authority to manage all monies received by it. All State general
1653 funds to be allocated to the University shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher
Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General
Assembly the degree to which each public institution of higher education of the Commonwealth has met
the financial and administrative management and educational-related performance benchmarks called for
by that subsection and approved as part of the Appropriation Act then in effect for the State goals and

1659 objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 1660 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks 1661 described in § 23-9.6:1.01 of the Code of Virginia, are effective, as provided in a general Appropriation 1662 Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth 1663 1664 that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance 1665 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 of the Act, shall 1666 receive certain financial incentives, including the interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of 1667 1668 higher education.

1669 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for 1670 which it has received such certification from SCHEV, the University is authorized to hold and invest 1671 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise 1672 funds, and all other non-general fund revenues subject to the following requirements:

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

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

1677 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold 1678 in escrow all interest earned on the University's tuition and fees and other non-general fund Educational 1679 and General Revenues. Interest earned on the escrow account shall be deposited to the account. Upon 1680 receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of 1681 § 23-38.88 of the Act, the Governor shall include in the next budget bill a non-general fund 1682 1683 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the 1684 amount deposited in the escrow account as the financial incentive provided in subdivision 1 of 1685 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in 1686 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 1687 1688 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall 1689 not apply to such interest on such funds, and such interest shall not be held in escrow.

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

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

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

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

1705 The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 1706 1707 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 1708 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 1709 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be 1710 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 1711 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the 1712 Department of Planning and Budget by July 31 of the subsequent fiscal year.

1713 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 1714 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 1715 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the 1716 intent of the Commonwealth and the University that the University shall be exempt from the revenue 1717 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the 1718 1719 University that the University shall be entitled to retain non-general fund savings generated from 1720 changes in Commonwealth rates and charges, including but not limited to health, life, and disability

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insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
reverting such savings back to the Commonwealth. This financial resource policy assists the University
by providing the framework for retaining and managing non-general funds, for the receipt of general
funds, and for the use and stewardship of all these funds.

1725 The President, acting through the Executive Vice President and Chief Operating Officer, shall 1726 continue to provide oversight of the University's cash management system which is the framework for 1727 the retention of non-general funds. The Internal Audit Department of the University shall periodically 1728 audit the University's cash management system in accordance with appropriate risk assessment models 1729 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight 1730 shall continue to be provided through the annual audit and assessment of internal controls performed by 1731 the Auditor of Public Accounts. For the receipt of general and non-general funds, the University shall 1732 conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the 1733 Code of Virginia as it currently exists and from time to time may be amended.

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VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

1735 The President, through the Executive Vice President and Chief Operating Officer, shall continue to
1736 be authorized to create and implement any and all Accounts Receivable Management and Collection
1737 policies as part of a system for the management of University financial resources. The policies shall be
1738 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the
1739 Code of Virginia, such that the University shall take all appropriate and cost effective actions to
1740 aggressively collect accounts receivable in a timely manner.

1741 These shall include, but not be limited to, establishing the criteria for granting credit to University 1742 customers; establishing the nature and timing of collection procedures within the above general 1743 principles; and the independent authority to select and contract with collection agencies and, after 1744 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 1745 collection activities for all University accounts receivable such as reporting delinquent accounts to credit 1746 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 1747 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's 1748 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the 1749 State Comptroller to implement such Programs, and shall provide a quarterly summary report of 1750 receivables to the Department of Accounts in accordance with the reporting procedures established 1751 pursuant to the Virginia Debt Collection Act.

1752 IX. DISBURSEMENT MANAGEMENT.

1753 The President, acting through the Executive Vice President and Chief Operating Officer, shall 1754 continue to be authorized to create and implement any and all disbursement policies as part of a system 1755 for the management of University financial resources. The disbursement management policies shall 1756 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the 1757 execution of the University's operations. These policies also shall continue to address the timing of 1758 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the 1759 appropriateness of certain goods or services relative to the University's mission, including travel-related 1760 disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic 1761 payments. Since the University no longer will interface to the CARS system or any replacement for the 1762 1763 CARS system for disbursements, the University shall establish its own mechanisms for electronic 1764 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the 1765 Commonwealth's Debt Set-Off Collection Programs.

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

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation
for Educational and General programs on *or about* the first and fifteenth days of each month *with adjustments needed to meet short-term cash requirements associated with the Commonwealth's bimonthly pay dates*, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or
after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year
in order to meet student obligations;

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

iii) The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit

1782 is likely in activities supported by general fund appropriations, the University may make a request to the 1783 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures. 1784

1785 These disbursement policies shall authorize the President, acting through the Executive Vice 1786 President and Chief Operating Officer, to independently select, engage, and contract for such consultants, 1787 accountants, and financial experts, and other such providers of expert advice and consultation, and, after 1788 consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable 1789 in his or her discretion. The policies also shall continue to include the ability to locally manage and 1790 administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject 1791 to any restrictions contained in the Commonwealth's contracts governing those programs, provided that 1792 the University shall submit the credit card and cost recovery aspects of its financial and operations 1793 policies to the State Comptroller for review and comment prior to implementing those aspects of those 1794 policies. The disbursement policies shall ensure that adequate risk management and internal control 1795 procedures shall be maintained over previously decentralized processes for public records, payroll, and 1796 non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment 1797 reports to the Department of Accounts in accordance with the reporting procedures established pursuant 1798 to the Prompt Payment Act.

1799 The University's disbursement policies shall be guided by the principles of the Commonwealth's 1800 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the 1801 Effective Date of its initial Management Agreement with the Commonwealth, the University shall 1802 continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the 1803 1804 State Comptroller for review and comment prior to their implementation by the University. 1805

X. DEBT MANAGEMENT.

1806 The President, acting through the Executive Vice President and Chief Operating Officer, shall 1807 continue to be authorized to create and implement any and all debt management policies as part of a 1808 system for the management of University financial resources.

1809 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes, 1810 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury 1811 Board, and that are consistent with debt capacity and management policies and guidelines established by 1812 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, 1813 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided 1814 1815 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 1816 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised 1817 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 1818 comment prior to its adoption by the University.

1819 The University recognizes that there are numerous types of financing structures and funding sources 1820 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 1821 the President, acting through the Executive Vice President and Chief Operating Officer, within the 1822 context of the overall portfolio to ensure that any financial product or structure is consistent with the 1823 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the 1824 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a 1825 full understanding of the transaction, including (i) the identification of potential risks and benefits, and 1826 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial 1827 products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt. 1828 1829

XI. INVESTMENT POLICY.

1830 It is the policy of the University to invest its operating and reserve funds solely in the interest of the 1831 University and in a manner that will provide the highest investment return with the maximum security 1832 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act 1833 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence 1834 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and 1835 familiar with such matters would use in the conduct of an enterprise of a like character and with like 1836 aims.

1837 Endowment investments shall be invested and managed in accordance with the Uniform Management 1838 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

1839 The Board of Visitors shall periodically review and approve the investment guidelines governing the 1840 University's operating and reserve funds. 1841

XII. INSURANCE AND RISK MANAGEMENT.

1842 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any 1843 intent during the next biennium to withdraw from any insurance or risk management program made

1844 available to the University through the Commonwealth's Division of Risk Management and in which the 1845 University is then participating, to enable the Commonwealth to complete an adverse selection analysis 1846 of any such decision and to determine the additional costs to the Commonwealth that would result from 1847 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University 1848 proceeds to withdraw from the insurance or risk management program, the University shall reimburse 1849 the Commonwealth for all such additional costs attributable to such withdrawal as determined by the 1850 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University 1851 and the Commonwealth.

1852 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 1853 30, 20102012, provided that on or before November 15, 2011, the Governor provides to the Chairmen 1854 of the House Committee on Appropriations and the Senate Committee on Finance written notification 1855 that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015. 1856 1857

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MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS **ACT OF 2005** POLICY GOVERNING CAPITAL PROJECTS

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

I. PREAMBLE.

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1875 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 1876 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the 1877 College of William and Mary in Virginia may be delegated the authority to establish its own system for 1878 undertaking the implementation of its capital projects. In general, status as a Covered Institution is 1879 designed to replace the post-authorization system of reviews, approvals, policies and procedures carried 1880 out by a variety of central State agencies, and also the traditional pre-authorization approval process for 1881 projects funded entirely with non-general funds and without any proceeds from State Tax Supported 1882 Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together 1883 1884 with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the 1885 Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, 1886 Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the 1887 adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state 1888 general fund appropriation, State Tax Supported Debt, or funding from other sources.

1889 This Policy is intended to encompass and implement the authority that may be granted to the College 1890 pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant 1891 to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of 1892 the Act and the College's Enabling Legislation, are not affected by this Policy.

1893 II. DEFINITIONS.

1894 As used in this policy, the following terms shall have the following meanings, unless the context 1895 requires otherwise:

1896 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 1897 Chapter 4.10 of Title 23 of the Code of Virginia.

1898 "Board of Visitors" or "Board" means the Rector and Visitors of the College of William and Mary in 1899 Virginia.

1900 'Capital Lease" means a lease that is defined as such within Generally Accepted Accounting 1901 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

1902 "Capital Professional Services" means professional engineering, architecture, land surveying and 1903 landscape architecture services related to capital projects.

"Capital project(s)" means the acquisition of any interest in land, including improvements on the 1904

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1905 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital 1906 Leases.

1907 "College" means the College of William and Mary in Virginia, (State Agency 204), and the Virginia 1908 Institute of Marine Science, (State Agency 268).

1909 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a 1910 public institution of higher education of the Commonwealth of Virginia that has entered into a 1911 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of 1912 the Act.

1913 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of 1914 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions 1915 of the individual public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3. 1916

1917 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on 1918 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing 1919 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

1920 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 1921 9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from 1922 general government funds, as defined in the December 20, 2004 Report to the Governor and General 1923 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time. 1924 III. SCOPE OF POLICY.

This Policy applies to the planning and budget development for capital projects, capital project 1925 1926 authorization, and the implementation of capital projects, whether funded by a general fund 1927 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other 1928 sources.

1929 This Policy provides guidance for 1) the process for developing one or more capital project programs 1930 for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services 1931 and construction services, 4) design reviews and code approvals for capital projects, 5) environmental 1932 impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land 1933 dispositions, 9) project management systems, and 10) reporting requirements. 1934

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

1935 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the 1936 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 1937 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 1938 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 1939 the duties and responsibilities set forth in this Policy to a person or persons within the College, who, 1940 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 1941 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 1942 and procedures. 1943

V. CAPITAL PROGRAM.

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1944 The President shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the College for a given period of time consistent with the College's 1945 1946 published Master Plan. This process may or may not mirror the Commonwealth's requirements for 1947 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major 1948 Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General 1949 Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements 1950 for capital plans. The Board may approve amendments to the program for Major Capital Projects 1951 annually or more often if circumstances warrant.

1952 It shall be College policy that each capital project program shall meet the College's mission and 1953 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College policy that each capital project shall be of a size and scope to provide for the defined program needs, 1954 1955 designed in accordance with all applicable building codes and handicapped accessibility standards as 1956 well as the College's design guidelines and standards, and costed to reflect current costs and escalated to 1957 the mid-point of anticipated construction.

VI. AUTHORIZATION OF CAPITAL PROJECTS

1959 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its 1960 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for 1961 approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that 1962 are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those 1963 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the 1964 1965 State's process for capital budget requests.

1966 It shall be the policy of the College that the implementation of capital projects shall be carried out so

1967 that the capital project as completed is the capital project approved by the Board for Major Capital 1968 Projects and according to the procedures adopted by the President, acting through his designee, for all other capital projects. The President shall ensure strict adherence to this requirement. 1969

1970 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond 1971 the plans and justifications that were the basis for the capital project's approval, either before or during 1972 construction, unless approved in advance as described above. Minor changes shall be permissible if they 1973 are determined by the President, acting through his designee, to be justified.

1974 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must 1975 include a statement of urgency if not part of the approved Major Capital Project program.

1976 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 1977 SERVICES.

1978 It shall be the policy of the College that procurements shall result in the purchase of high quality 1979 services and construction at reasonable prices and shall be consistent with the Policy Governing the 1980 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 1981 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and 1982 Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed 1983 to:

1984 Seeking competition to the maximum practical degree, taking into account the size of the anticipated 1985 procurement, the term of the resulting contract and the likely extent of competition;

1986 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the 1987 appearance of any impropriety prohibited by State law or College policy;

1988 Making procurement rules clear in advance of any competition;

1989 Providing access to the College's business to all qualified vendors, firms and contractors, with no 1990 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in 1991 cooperative procurements and to meet special needs of the College;

1992 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against 1993 employees or applicants because of race, religion, color, sex, national origin, age, disability or other 1994 basis prohibited by State law except where there is a bona fide occupational qualification reasonably 1995 necessary to the contractor's normal operations;

1996 Providing for a non-discriminatory procurement process, and including appropriate and lawful 1997 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small 1998 businesses and to promote and encourage a diversity of suppliers.

1999 The President, acting through his designee, is authorized to develop implementing procedures for the 2000 procurement of Capital Professional Services and construction services at the College. The procedures 2001 shall implement this Policy and provide for:

2002 A system of competitive negotiation for Capital Professional Services, including a procedure for 2003 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of 2004 2005 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

A prequalification procedure for contractors or products; 2006

2007 A procedure for special construction contracting methods, including but not limited to design-build 2008 and construction management contracts; and

2009 A prompt payment procedure.

2010 The College also may enter into cooperative arrangements with other private or public health or 2011 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, 2012 in the judgment of the College, the purposes of this Policy will be furthered. 2013

VIII. DESIGN REVIEWS AND CODE APPROVALS.

2014 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final 2015 Major Capital Project authorization based on the size, scope and cost estimate provided with the design. 2016 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be 2017 required. For all capital projects other than Major Capital Projects, the President, acting through his 2018 designee, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the College's policy that all capital projects shall be 2019 2020 designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code 2021 (VUSBC) standards and the applicable accessibility code.

2022 The President shall designate a Building Official responsible for building code compliance at the 2023 College, including the Virginia Institute of Marine Science and Richard Bland College, by either (i) 2024 hiring an individual to be the College Building Official, or (ii) continuing to use the services of the 2025 Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the College Building Official shall be a 2026 full-time an employee of the College who has no other assigned duties or responsibilities at the 2027

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2028 institution and who is not employed by any firm or business providing facility services to the College, a 2029 registered professional architect or engineer, and certified by the Department of Housing and Community 2030 Development to perform this Building Official function. The College Building Official shall issue 2031 building permits for each capital project required by the VUSBC to have a building permit, and shall 2032 determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all 2033 capital projects requiring such certification. Prior to issuing any such certification, this individual shall 2034 ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee as required. When serving 2035 2036 as the College Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code 2037 review requirement by maintaining a review unit of licensed professional architects or engineers 2038 supported by resources and staff who are certified by the Department of Housing and Community 2039 2040 Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and 2041 2042 perform required inspections of work in progress and the completed capital project. No individual 2043 licensed professional architect or engineer hired under the College's personnel system as a member of 2044 the review unit or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management 2045 2046 functions for the College on the same capital project.

2047 IX. ENVIRONMENTAL IMPACT REPORTS.

2048 It shall be the policy of the College to assess the environmental, historic preservation, and 2049 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts 2050 to the extent practicable. The College shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic 2051 2052 preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of 2053 2054 \$300,000 or more. 2055

X. BUILDING DEMOLITIONS.

2056 It shall be the policy of the College to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. 2057 2058 The College shall develop a procedure for the preparation and review of demolition requests, including 2059 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review 2060 Board in accordance with State historic preservation requirements generally applicable to capital projects 2061 in the Commonwealth. Further, for any property that was acquired or constructed with funding from a 2062 general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, 2063 general laws applicable to State owned property shall apply. 2064

XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the College that capital projects involving building or land acquisition shall be 2065 2066 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. 2067 The President, acting through his designee, shall ensure that the project management system 2068 implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that 2069 2070 any building or land acquired by the College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College and that the cost of the real 2071 2072 property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, 2073 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out. 2074 2075 2076

A. Environmental and Land Use Considerations.

2077 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition. 2078 Such cooperation shall include but not be limited to furnishing any information that the locality may 2079 reasonably request and reviewing any requests by the locality with regard to any such acquisition. The 2080 College shall consider the zoning and comprehensive plan designation by the locality of the building or 2081 land and surrounding parcels, as well as any designation by State or federal agencies of historically or 2082 archeologically significant areas on the land. Nothing herein shall be construed as requiring the College 2083 to comply with local zoning laws and ordinances. 2084

B. Infrastructure and Site Condition.

2085 The President, acting through his designee, shall ensure that, in the case of capital projects involving 2086 the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any 2087 2088 land can be developed for its intended purpose without extraordinary cost; that an environmental 2089 engineer has been engaged by the College to provide an assessment of any environmental conditions on

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2090 the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the 2091 building or land; that utilities and other services to the land are adequate or can reasonably be provided 2092 or have been provided in the case of building acquisitions; and that the condition and grade of the soils 2093 have been examined to determine if any conditions exist that would require extraordinary site work or 2094 foundation systems. 2095

C. Title and Survey.

2096 A survey shall be prepared for any real property acquired, and an examination of title to the real 2097 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title 2098 insurance shall be procured from a title insurance company authorized to do business in the 2099 Commonwealth. Based upon the survey and title examination or report, the President, acting through his 2100 designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to 2101 the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or 2102 other matters that may have a significant adverse effect upon the College's ability to own, occupy, 2103 convey or develop the real property.

2104 D. Appraisal.

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2105 An appraisal shall be conducted of the real property to be acquired to determine its fair market value 2106 and the consistency of the fair market value with the price agreed upon by the College.

2107 XII. BUILDING OR LAND DISPOSITIONS.

2108 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or 2109 buildings, the acquisition or construction of which was funded entirely or in part by a general fund 2110 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 2111 Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the College's Enabling Legislation. 2112

2113 XIII. PROJECT MANAGEMENT SYSTEMS.

2114 The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management 2115 authority to appropriate College officials, including a grant of authority to such officials to engage in 2116 2117 further delegation of authority as the President deems appropriate.

2118 The project management systems for capital projects shall be designed to ensure that such projects 2119 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely 2120 related subjects such as selection of architects or policies applicable to College buildings and grounds.

2121 The project management systems may include one or more reporting systems applicable to capital 2122 projects whereby College officials responsible for the management of such projects provide appropriate 2123 and timely reports to the President on the status of such projects during construction. 2124

XIV. REPORTING REQUIREMENTS.

2125 In addition to complying with any internal reporting systems contained in the College's project 2126 management systems, as described in Section XIII above, the College shall comply with State reporting 2127 requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs 2128 2129 improvements on land, or renovates property, that originally was acquired or constructed in whole or in 2130 part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and 2131 such improvements or renovations are undertaken entirely with funds not appropriated by the General 2132 Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 2133 million dollars, the decision to undertake such improvements or renovations shall be communicated as 2134 required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through his 2135 designee, shall report to the Department of General Services on the status of such capital projects at the 2136 initiation of the project, prior to the commencement of construction, and at the time of acceptance of 2137 any such capital project. 2138

ATTACHMENT 1

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

Governed by Subchapter 3 of the

Restructured Higher Education Financial and Administrative Operations Act,

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

2145 In accordance with the provisions of the Restructured Higher Education Financial and Administrative 2146 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in 2147 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the 2148 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth 2149 pursuant to Subchapter 3 of the Act, has adopted the following Rules Governing Procurement of Goods, 2150 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and

2151 construction by the Institution, excluding the University of Virginia Medical Center:

2152 § 1. Purpose. -

2153 The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, 2154 services, insurance, and construction by the Institution from nongovernmental sources, to include 2155 governmental procurement that may or may not result in monetary consideration for either party. These 2156 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the 2157 Institution, the contractor, or some third party is providing the consideration.

2158 § 2. Scope of Procurement Authority. -

2159 Subject to these Rules, and the Institution's continued substantial compliance with the terms and 2160 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and 2161 exercise all of the authority relating to procurement of goods, services, insurance, and construction, 2162 2163 including but not limited to capital outlay-related procurement and information technology-related 2164 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring 2165 Act. 2166

§ 3. Competition is the Priority. -

2167 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all 2168 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any 2169 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's 2170 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body 2171 of the Institution that competition be sought to the maximum feasible degree, that procurement 2172 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad 2173 flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing 2174 2175 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely 2176 exchange information concerning what is sought to be procured and what is offered. The Institution 2177 may consider best value concepts when procuring goods and nonprofessional services, but not 2178 construction or professional services. Professional services will be procured using a qualification-based 2179 selection process. The criteria, factors, and basis for consideration of best value and the process for the 2180 consideration of best value shall be as stated in the procurement solicitation. 2181

§ 4. Definitions. -

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As used in these Rules:

2183 "Affiliate" means an individual or business that controls, is controlled by, or is under common 2184 control with another individual or business. A person controls an entity if the person owns, directly or 2185 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition 2186 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 2187 members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 2188 partnership interest shall be deemed to be a voting security. 2189

2190 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 2191 and various elements of required services that in total are optimal relative to the Institution's needs.

2192 "Business" means any type of corporation, partnership, limited liability company, association, or sole 2193 proprietorship operated for profit. 2194

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

2195 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 2196 procured, specifying the factors that will be used in evaluating the proposal and containing or 2197 incorporating by reference the other applicable contractual terms and conditions, including any unique 2198 capabilities or qualifications that will be required of the contractor.

2199 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 2200 proposals by publication in a newspaper or newspapers of general circulation in the area in which the 2201 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 2202 can be reasonably anticipated to submit proposals in response to the particular request. Public notice 2203 also shall be published on the Department of General Services' central electronic procurement website 2204 and may be published on other appropriate websites. In addition, proposals may be solicited directly 2205 from potential contractors.

2206 Procurement of professional services. The procurement of professional services for capital 3. a. 2207 projects shall be conducted using a qualification-based selection process. The Institution shall engage in 2208 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 2209 basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 2210 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, 2211 2212 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors

furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss 2213 2214 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where 2215 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors 2216 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this 2217 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information 2218 developed in the selection process to this point, the Institution shall select in the order of preference two 2219 or more offerors whose professional qualifications and proposed services are deemed most meritorious.

2220 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory 2221 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be 2222 2223 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a 2224 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and 2225 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly 2226 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to 2227 that offeror.

A contract for architectural or professional engineering services relating to construction projects may 2228 2229 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience 2230 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 2231 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 2232 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the 2233 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 2234 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 2235 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 2236 Request for Proposal stated the potential for a multi-vendor award. Multiphase professional services 2237 contracts satisfactory and advantageous to the Institution for environmental, location, design and 2238 inspection work regarding construction of infrastructure projects may be negotiated and awarded based 2239 on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier 2240 phases is necessary to provide information critical to the negotiation of a fair and reasonable price for 2241 succeeding phases. Prior to the procurement of any such contract, the Institution shall state the 2242 anticipated intended total scope of the project and determine in writing that the nature of the work is 2243 such that the best interests of such Institution require awarding the contract.

2244 b. Procurement of other than professional services. Selection shall be made of two or more offerors 2245 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 2246 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 2247 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but 2248 need not be the sole determining factor. After negotiations have been conducted with each offeror so 2249 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 2250 shall award the contract to that offeror. When the terms and conditions of multiple awards are so 2251 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 2252 Institution determine in writing and in its sole discretion that only one offeror has made the best 2253 proposal, a contract may be negotiated and awarded to that offeror.

2254 'Competitive sealed bidding" is a method of contractor selection, other than for professional services, 2255 which includes the following elements:

2256 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 2257 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided 2258 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 2259 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 2260 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of 2261 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been 2262 qualified under the criteria set forth in the first solicitation.

2263 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 2264 publication on the Department of General Services' central electronic procurement website. Public notice 2265 also may be published in a newspaper of general circulation or on other appropriate websites, or both. 2266 In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall 2267 include businesses selected from a list made available by the Department of Minority Business 2268 Enterprise. 2269

3. Public opening and announcement of all bids received.

2270 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 2271 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 2272 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which 2273 are helpful in determining acceptability.

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

2276 "Construction" means building, altering, repairing, improving or demolishing any structure, building2277 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

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

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

2285 "Design-build contract" means a contract between the Institution and another party in which the party
2286 contracting with the Institution agrees to both design and build the structure, roadway or other item
2287 specified in the contract.

2288 "Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.

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

2293 "Multiphase professional services contract" means a contract for the providing of professional
2294 services where the total scope of work of the second or subsequent phase of the contract cannot be
2295 specified without the results of the first or prior phase of the contract.

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

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

2306 "Professional services" means work performed by an independent contractor within the scope of the
2307 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
2308 dentistry, medicine, optometry, pharmacy or professional engineering.

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

2313 "Public contract" means an agreement between the Institution and a nongovernmental source that is2314 enforceable in a court of law.

2315 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
2316 fully the contract requirements and the moral and business integrity and reliability that will assure good
2317 faith performance, and who has been prequalified, if required.

2318 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects2319 to the Invitation to Bid.

2320 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
2321 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

2322 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction2323 adopted by the governing body of the Covered Institution.

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

2329 "Services" means any work performed by an independent contractor wherein the service rendered
2330 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
2331 and supplies.

2332 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
2333 environment and individual goals that utilizes work experience and related services for assisting the
2334 handicapped person to progress toward normal living and a productive vocational status.

2335 § 5. Methods of procurement. -

2336 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 2337 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or 2338 competitive negotiation as provided in this section, unless otherwise authorized by law.

2339 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 2340 shall be used for design services. 2341

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

2342 D. Construction may be procured only by competitive sealed bidding, except that competitive 2343 negotiation may be used in the following instances upon a determination made in advance by the 2344 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally 2345 advantageous to the public, which writing shall document the basis for this determination:

2346

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

2347 2348 By the Institution for the construction of highways and any draining, dredging, excavation, 3. 2349 grading or similar work upon real property.

2350 E. Upon a determination in writing that there is only one source practicably available for that which 2351 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed 2352 bidding or competitive negotiation. The writing shall document the basis for this determination. The 2353 Institution shall issue a written notice stating that only one source was determined to be practicably 2354 available, and identifying that which is being procured, the contractor selected, and the date on which 2355 the contract was or will be awarded. This notice shall be posted in a designated public area, which may 2356 be the Department of General Services' website for the Commonwealth's central electronic procurement 2357 system, or published in a newspaper of general circulation on the day the Institution awards or 2358 announces its decision to award the contract, whichever occurs first. Public notice shall also be 2359 published on the Department of General Services' website for the Commonwealth's central electronic 2360 procurement system and may be published on other appropriate websites.

2361 F. In case of emergency, a contract may be awarded without competitive sealed bidding or 2362 competitive negotiation; however, such procurement shall be made with such competition as is 2363 practicable under the circumstances. A written determination of the basis for the emergency and for the 2364 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 2365 written notice stating that the contract is being awarded on an emergency basis, and identifying that 2366 which is being procured, the contractor selected, and the date on which the contract was or will be 2367 awarded. This notice shall be posted in a designated public area, which may be the Department of 2368 General Services' website for the Commonwealth's central electronic procurement system, or published 2369 in a newspaper of general circulation on the day the Institution awards or announces its decision to 2370 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also 2371 be published on the Department of General Services' website for the Commonwealth's central electronic 2372 procurement system and other appropriate websites.

2373 The Institution may establish purchase procedures, if adopted in writing, not requiring G. 2374 competitive sealed bids or competitive negotiation for single or term contracts for goods and services 2375 other than professional services if the aggregate or the sum of all phases is not expected to exceed 2376 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

2377 The Institution may establish purchase procedures, if adopted in writing, not requiring H. 2378 competitive negotiation for single or term contracts for professional services if the aggregate or the sum 2379 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide 2380 for competition wherever practicable.

2381 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase 2382 of goods, products or commodities from a public auction sale is in the best interests of the public, such 2383 items may be purchased at the auction, including online public auctions. The writing shall document the 2384 basis for this determination.

2385 J. The purchase of goods or nonprofessional services, but not construction or professional services, 2386 may be made by reverse auctioning. 2387

§ 6. Cooperative procurement. -

2388 A. In circumstances where the Institution determines and documents that statewide contracts for 2389 goods and services, including information technology and telecommunications goods and services, do not 2390 provide goods and services to the Institution that meet its business goals and objectives, the Institution is 2391 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on 2392 behalf of or in conjunction with public bodies, public or private health or educational institutions, other 2393 public or private organizations or entities, including public-private partnerships, charitable organizations, 2394 health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the 2395 2396 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce

2397 administrative expense in any acquisition of goods and services, other than professional services. The 2398 Institution may purchase from any authority, department, agency, institution, city, county, town, or other 2399 political subdivision of the Commonwealth's contract even if it did not participate in the request for 2400 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the 2401 procurement was being conducted on behalf of other public bodies. In such instances, deviation from 2402 the procurement procedures set forth in these Rules and the administrative policies and procedures 2403 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic 2404 2405 procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for 2406 2407 participation in any such arrangement.

2408 In circumstances where statewide contracts for goods and services, including information B. 2409 technology and telecommunications goods and services, do not provide goods and services to meet the 2410 Institution's business goals and objectives, and as authorized by the United States Congress and 2411 consistent with applicable federal regulations, and provided the terms of the contract permit such 2412 purchases:

2413 1. The Institution may purchase goods and nonprofessional services, from a United States General 2414 Services Administration contract or a contract awarded by any other agency of the United States 2415 government; and

2416 The Institution may purchase telecommunications and information technology goods and 2. 2417 nonprofessional services from a United States General Services Administration contract or a contract 2418 awarded by any other agency of the United States government. 2419

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

2420 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed 2421 price design-build basis or construction management basis in accordance with the provisions of this 2422 section.

2423 B. Procurement of construction by the design-build or construction management method shall be a 2424 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 2425 qualifications. Based upon the information submitted and any other relevant information which the 2426 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 2427 selected by the Commonwealth and requested to submit proposals. 2428

§ 8. Modification of the contract. -

2429 A. A contract awarded by the Institution may include provisions for modification of the contract 2430 during performance, but no fixed-price contract may be increased by more than 25% of the amount of 2431 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's 2432 president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 2433 2434 an error in its bid or offer.

2435 B. The Institution may extend the term of an existing contract for services to allow completion of 2436 any work undertaken but not completed during the original term of the contract.

2437 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 2438 modifications. 2439

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

2440 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 2441 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 2442 2443 Institution shall include businesses selected from a list made available by the Department of Minority 2444 Business Enterprise.

2445 B. The Institution shall establish programs consistent with this section to facilitate the participation 2446 of small businesses and businesses owned by women and minorities in procurement transactions. The 2447 programs established shall be in writing and shall include cooperation with the Department of Minority 2448 Business Enterprise, the United States Small Business Administration, and other public or private 2449 agencies. The Institution shall submit annual progress reports on minority business procurement to the 2450 Department of Minority Business Enterprise.

2451 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 2452 analysis that documents a statistically significant disparity between the availability and utilization of 2453 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 2454 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 2455 law.

2456 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 2457 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 2458 that employing ex-offenders on the specific contract is not in its best interest.

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2459 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

2460 The Institution shall include in every contract of more than \$10,000 the following provisions:

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

2462 a. The contractor will not discriminate against any employee or applicant for employment because of 2463 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to 2464 discrimination in employment, except where there is a bona fide occupational qualification reasonably 2465 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, 2466 available to employees and applicants for employment, notices setting forth the provisions of this 2467 nondiscrimination clause.

2468 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 2469 contractor, will state that such contractor is an equal opportunity employer.

2470 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 2471 shall be deemed sufficient for the purpose of meeting the requirements of this section.

2472 The contractor will include the provisions of the foregoing paragraphs a, b and c in every 2473 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 2474 subcontractor or vendor. 2475

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions.-2476

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

2477 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace 2478 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 2479 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 2480 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 2481 workplace and specifying the actions that will be taken against employees for violations of such 2482 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 2483 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the 2484 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 2485 binding upon each subcontractor or vendor.

2486 For the purposes of this section, "drug-free workplace" means a site for the "performance of work 2487 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 2488 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 2489 dispensation, possession or use of any controlled substance or marijuana during the performance of the 2490 contract.

§ 12. Use of brand names. -

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2492 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or 2493 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be 2494 deemed to convey the general style, type, character, and quality of the article desired. Any article that 2495 the Institution in its sole discretion determines to be the equal of that specified, considering quality, 2496 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. 2497

§ 13. Comments concerning specifications. -

2498 The Institution shall establish procedures whereby comments concerning specifications or other 2499 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the 2500 time set for receipt of bids or proposals or award of the contract. 2501

§ 14. Prequalification generally; prequalification for construction. -

2502 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or 2503 construction, and consideration of bids or proposals limited to prequalified contractors. Any 2504 prequalification procedure shall be established in writing and sufficiently in advance of its 2505 implementation to allow potential contractors a fair opportunity to complete the process.

2506 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant 2507 to a prequalification process for construction projects adopted by the Institution. The process shall be 2508 consistent with the provisions of this section.

2509 The application form used in such process shall set forth the criteria upon which the qualifications of 2510 prospective contractors will be evaluated. The application form shall request of prospective contractors 2511 only such information as is appropriate for an objective evaluation of all prospective contractors 2512 pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to 2513 request, by checking the appropriate box, that all information voluntarily submitted by the contractor 2514 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the 2515 provisions of subsection D of § 34 of these Rules.

2516 In all instances in which the Institution requires prequalification of potential contractors for 2517 construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set 2518 2519 for the submission of bids for such construction so as to allow the procedures set forth in this subsection

2520 to be accomplished.

2521 At least 30 days prior to the date established for submission of bids or proposals under the 2522 procurement of the contract for which the prequalification applies, the Institution shall advise in writing 2523 each contractor who submitted an application whether that contractor has been prequalified. In the event 2524 that a contractor is denied prequalification, the written notification to the contractor shall state the 2525 reasons for the denial of prequalification and the factual basis of such reasons.

2526 A decision by the Institution denying prequalification under the provisions of this subsection shall be 2527 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

2528 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the 2529 following:

2530 1. The contractor does not have sufficient financial ability to perform the contract that would result 2531 from such procurement. If a bond is required to ensure performance of a contract, evidence that the 2532 contractor can acquire a surety bond from a corporation included on the United States Treasury list of 2533 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to 2534 establish the financial ability of the contractor to perform the contract resulting from such procurement;

2535 The contractor does not have appropriate experience to perform the construction project in 2. 2536 question;

2537 3. The contractor or any officer, director or owner thereof has had judgments entered against him 2538 within the past 10 years for the breach of contracts for governmental or nongovernmental construction, 2539 including, but not limited to, design-build or construction management;

2540 4. The contractor has been in substantial noncompliance with the terms and conditions of prior 2541 construction contracts with the Institution without good cause. If the Institution has not contracted with a 2542 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor 2543 has been in substantial noncompliance with the terms and conditions of comparable construction 2544 contracts with another public body without good cause. The Institution may not utilize this provision to 2545 deny prequalification unless the facts underlying such substantial noncompliance were documented in 2546 writing in the prior construction project file and such information relating thereto given to the contractor 2547 at that time, with the opportunity to respond;

2548 5. The contractor or any officer, director, owner, project manager, procurement manager or chief 2549 financial official thereof has been convicted within the past 10 years of a crime related to governmental 2550 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental 2551 2552 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 2553 substantially similar law of the United States or another state;

2554 The contractor or any officer, director or owner thereof is currently debarred pursuant to an 6 2555 established debarment procedure from bidding or contracting by any public body, agency of another 2556 state or agency of the federal government; and

2557 7. The contractor failed to provide to the Institution in a timely manner any information requested 2558 by the Institution relevant to subdivisions 1 through 6 of this subsection. 2559

§ 15. Negotiation with lowest responsible bidder. -

2560 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as 2561 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the 2562 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. 2563 However, the negotiation may be undertaken only under conditions and procedures described in writing 2564 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein. 2565

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

2566 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or 2567 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 2568 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 2569 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror. 2570

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. -

2573 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance 2574 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be 2575 excluded from presenting an insurance bid proposal to the Institution in response to a request for 2576 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a 2577 prospective insurer pursuant to § 18. 2578

§ 18. Debarment. -

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2579 Prospective contractors may be debarred from contracting for particular types of supplies, services, 2580 insurance or construction, for specified periods of time. Any debarment procedure shall be established in 2581 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a

2582 contractor's unsatisfactory performance for the Institution.

2583 § 19. Purchase programs for recycled goods; Institution responsibilities. -

2584 A. The Institution may implement a purchase program for recycled goods and may coordinate its 2585 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 2586 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

2587 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets 2588 Development Council, shall advise the Institution concerning the designation of recycled goods. 2589

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

2590 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or 2591 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 2592 decided by lot.

2593 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 2594 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 2595 lowest responsive and responsible bidder who is a resident of Virginia.

2596 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where 2597 goods are being offered, and existing price preferences have already been taken into account, preference 2598 shall be given to the bidder whose goods contain the greatest amount of recycled content. 2599

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

2600 In determining the award of any contract for coal to be purchased for use in the Institution with state 2601 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest 2602 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more 2603 than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined 2604 elsewhere. 2605

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

2606 A. In determining the award of any contract for paper and paper products to be purchased for use 2607 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable 2608 for the purpose intended, so long as the price is not more than 10% greater than the price of the low 2609 responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

2610 B. For purposes of this section, recycled paper and paper products means any paper or paper 2611 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

2612 § 23. Withdrawal of bid due to error. -

2613 A. A bidder for a public construction contract, other than a contract for construction or maintenance 2614 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 2615 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 2616 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 2617 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made 2618 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can 2619 be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. 2620

2621 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from 2622 consideration if the price bid would have been substantially lower than the other bids due solely to the 2623 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 2624 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 2625 objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. 2626

One of the following procedures for withdrawal of a bid shall be selected by the Institution and 2627 2628 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 2629 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 2630 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or 2631 designated official his original work papers, documents and materials used in the preparation of the bid 2632 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 2633 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 2634 instance, the work papers, documents and materials may be considered as trade secrets or proprietary 2635 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 2636 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 2637 shall have two hours after the opening of bids within which to claim in writing any mistake as defined 2638 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 2639 period has elapsed. The mistake shall be proved only from the original work papers, documents and 2640 materials delivered as required herein.

2641 B. The Institution may establish procedures for the withdrawal of bids for other than construction 2642 contracts.

2643 C. No bid shall be withdrawn under this section when the result would be the awarding of the 2644 contract on another bid of the same bidder or of another bidder in which the ownership of the 2645 withdrawing bidder is more than 5%.

2646 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed 2647 to be the low bid.

2648 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or 2649 labor to or perform any subcontract or other work agreement for the person or firm to whom the 2650 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. 2651

2652 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 2653 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid 2654 price, provided such bidder is a responsible and responsive bidder. 2655

§ 24. Contract Pricing Arrangements. -

2656 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules. 2657

2658 B. Except in case of emergency affecting the public health, safety or welfare, no public contract 2659 shall be awarded on the basis of cost plus a percentage of cost.

2660 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis 2661 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole 2662 or part as a percentage of such claims, shall not be prohibited by this section. 2663

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

2664 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage 2665 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 2666 2667 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 2668 evidence of such coverage.

2669 B. The Department of General Services shall provide the form to the Institution. Failure of the 2670 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A. 2671

2672 C. No subcontractor shall perform any work on a construction project of the Institution unless he 2673 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage 2674 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 2675 Virginia. 2676

§ 26. Retainage on construction contracts. -

2677 A. In any contract issued by the Institution for construction that provides for progress payments in 2678 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% 2679 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful 2680 performance of the contract. All amounts withheld may be included in the final payment.

2681 B. Any subcontract for a public project that provides for similar progress payments shall be subject 2682 to the provisions of this section.

2683 § 27. Public construction contract provisions barring damages for unreasonable delays declared void. 2684

A. Any provision contained in any public construction contract of the Institution that purports to 2685 2686 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the 2687 2688 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to 2689 causes within their control shall be void and unenforceable as against public policy.

2690 Subsection A shall not be construed to render void any provision of a public construction Β. 2691 contract awarded by the Institution that:

2692 Allows the recovery of that portion of delay costs caused by the acts or omissions of the 1. contractor, or its subcontractors, agents or employees; 2693

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

3. Provides for liquidated damages for delay; or

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

2697 A contractor making a claim against the Institution for costs or damages due to the alleged С. 2698 delaying of the contractor in the performance of its work under any public construction contract of the 2699 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the 2700 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage 2701 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation 2702 or arbitration to be false or to have no basis in law or in fact.

2703 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 2704 the contractor in the performance of work under any public construction contract for the Institution, it

2705 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to 2706 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 2707 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 2708 determined through litigation or arbitration to have been made in bad faith. 2709

§ 28. Bid bonds. -

2710 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 2711 million shall be accompanied by a bid bond from a surety company selected by the bidder that is 2712 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will 2713 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 2714 5% of the amount bid.

2715 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for 2716 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

2717 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 2718 or proposals for construction contracts anticipated to be less than \$1 million. 2719

§ 29. Performance and payment bonds. -

2720 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million 2721 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to 2722 any prime contractor requiring the performance of labor or the furnishing of materials for buildings, 2723 structures or other improvements to real property owned by the Institution, the contractor shall furnish to 2724 the Institution the following bonds:

2725 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 2726 conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a 2727 2728 form and amount satisfactory to the Institution.

2729 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of 2730 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom 2731 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the 2732 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied 2733 or performed in the furtherance of the work.

2734 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but 2735 only for periods when the equipment rented is actually used at the site.

2736 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 2737 that are authorized to do business in Virginia. 2738

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

2739 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

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2740 E. Nothing in this section shall preclude the Institution from requiring payment or performance 2741 bonds for construction contracts below \$1 million.

2742 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish 2743 a payment bond with surety thereon in the sum of the full amount of the contract with such 2744 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are 2745 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the 2746 work provided for in the subcontract. 2747

§ 30. Alternative forms of security. -

2748 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 2749 escrow in the face amount required for the bond.

B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the 2750 2751 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 2752 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 2753 be granted only upon a determination that the alternative form of security proffered affords protection to 2754 the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts. -

2756 The Institution may require bid, payment, or performance bonds for contracts for goods or services if 2757 provided in the Invitation to Bid or Request for Proposal. 2758

§ 32. Action on performance bond. -

2759 No action against the surety on a performance bond shall be brought by the Institution unless 2760 brought within one year after (i) completion of the contract, including the expiration of all warranties 2761 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

2762 § 33. Actions on payment bonds; waiver of right to sue. -

2763 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 2764 material in accordance with the contract documents in furtherance of the work provided in any contract 2765 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 HB2464H1

2766 days after the day on which the claimant performed the last of the labor or furnished the last of the 2767 materials for which he claims payment, may bring an action on the payment bond to recover any 2768 amount due him for the labor or material. The obligee named in the bond need not be named a party to 2769 the action.

2770 Β. Any claimant who has a direct contractual relationship with any subcontractor but who has no 2771 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's 2772 payment bond only if he has given written notice to the contractor within 180 days from the day on 2773 which the claimant performed the last of the labor or furnished the last of the materials for which he 2774 claims payment, stating with substantial accuracy the amount claimed and the name of the person for 2775 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be 2776 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums 2777 2778 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the 2779 time limitations stated in this subsection.

2780 C. Any action on a payment bond shall be brought within one year after the day on which the 2781 person bringing such action last performed labor or last furnished or supplied materials.

2782 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 2783 it is in writing, signed by the person whose right is waived, and executed after such person has 2784 performed labor or furnished material in accordance with the contract documents. 2785

§ 34. Public inspection of certain records. -

A. Except as provided in this section, all proceedings, records, contracts and other public records 2786 2787 relating to procurement transactions shall be open to the inspection of any citizen, or any interested 2788 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et 2789 seq.).

2790 Cost estimates relating to a proposed procurement transaction prepared by or for the Institution Β. 2791 shall not be open to public inspection.

2792 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 2793 bid records within a reasonable time after the opening of all bids but prior to award, except in the event 2794 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid 2795 records shall be open to public inspection only after award of the contract.

2796 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect 2797 proposal records within a reasonable time after the evaluation and negotiations of proposals are 2798 completed but prior to award, except in the event that the Institution decides not to accept any of the 2799 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection 2800 only after award of the contract.

Any inspection of procurement transaction records under this section shall be subject to 2801 E. 2802 reasonable restrictions to ensure the security and integrity of the records.

2803 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection 2804 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 2805 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the 2806 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission 2807 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the 2808 reasons why protection is necessary. 2809

§ 35. Exemption for certain transactions. -

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

2811 1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be 2812 2813 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by 2814 § 23-76.1.

2815 The purchase of items for resale at retail bookstores and similar retail outlets operated by the 2. 2816 Institution. However, such purchase procedures shall provide for competition where practicable.

2817 Procurement of any construction or planning and design services for construction by the 3. 2818 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations. 2819 2820 whether or not those federal procedures are in conformance with the provisions of these Rules. 2821

4. The University of Virginia Medical Center.

2822 The purchase of goods and services by the Institution when such purchases are made under a 5. 2823 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

2824 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 2825 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 2826 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 2827 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination

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2828 of the Institution's President or his designee that acceptance of the grant or contract funds under the 2829 applicable conditions is in the public interest. Such determination shall state the specific provision of 2830 these Rules in conflict with the conditions of the grant or contract.

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

2832 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into 2833 contracts with faith-based organizations for the purposes described in this section on the same basis as 2834 any other nongovernmental source without impairing the religious character of such organization, and 2835 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

2836 B. For the purposes of this section, "faith-based organization" means a religious organization that is 2837 or applies to be a contractor to provide goods or services for programs funded by the block grant 2838 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 2839 104-193.

2840 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this 2841 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 2842 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 2843 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of 2844 religious freedom by the recipients of such goods, services, or disbursements.

2845 The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and D. 2846 purchase orders prominently display a nondiscrimination statement indicating that it does not 2847 discriminate against faith-based organizations.

2848 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any 2849 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on 2850 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 2851 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other 2852 organizations that contract with public bodies to account for the use of the funds provided; however, if 2853 the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) 2854 2855 shall be construed to supercedesupersede or otherwise override any other applicable state law.

2856 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 2857 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent 2858 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to 2859 expenditures pursuant to contracts, if any, for the services of chaplains.

2860 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization 2861 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based 2862 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of 2863 a particular religion.

2864 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 2865 to a contract between the Institution and a faith-based organization, objects to the religious character of 2866 the faith-based organization from which the individual receives or would receive the goods, services, or 2867 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 2868 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

2869 The Institution shall provide to each individual who applies for or receives goods, services, or 2870 disbursements provided pursuant to a contract between the Institution and a faith-based organization a 2871 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 2872 2873 charitable or religious character, practices, or expression. No provider of services may discriminate 2874 against you on the basis of religion, a religious belief, or your refusal to actively participate in a 2875 religious practice. If you object to a particular provider because of its religious character, you may 2876 request assignment to a different provider. If you believe that your rights have been violated, please 2877 discuss the complaint with your provider or notify the appropriate person as indicated in this form.

§ 37. Exemptions from competition for certain transactions. -

2879 The Institution may enter into contracts without competition, as that term is described in subsections 2880 A through J of § 5 (Methods of procurement) of these Rules, for: 2881

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

2882 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 2883 Blind and Vision Impaired;

2884 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported 2885 employment services serving the handicapped;

2886 c. Private educational institutions; or

2887 d. Other public educational institutions.

2888 2. Speakers and performing artists;

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2889 3. Memberships and Association dues;

2890 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 2891 goods or services by the Institution; 2892

5. Group travel in foreign countries;

2893 6. Conference facilities and services;

2894 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging. 2895 registration and tournament fees:

2896 8. Royalties; or

2897 The purchase of legal services, provided that the Office of the Attorney General has been 9. 2898 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

2899 10. Maintenance contract renewals for scientific research equipment and software, provided that the 2900 institution has posted the renewal to eVa and documented that there was only one response or less and 2901 such documentation includes a statement signed by the buyer indicating that no firm other than the 2902 original manufacturer/developer offers the service.

Exemptions from competitive sealed bidding and competitive negotiation for certain 2903 § 38. 2904 transactions; limitations. -

2905 The Institution may enter into contracts for insurance or electric utility service without competitive 2906 sealed bidding or competitive negotiation if purchased through an association of which the Institution is 2907 a member if the association was formed and is maintained for the purpose of promoting the interest and 2908 welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the 2909 2910 Institution has made a determination in advance after reasonable notice to the public and set forth in 2911 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the 2912 public. The writing shall document the basis for this determination.

2913 § 39. Definitions. -2914

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

2915 "Contractor" means the entity that has a direct contract with the Institution.

2916 "Debtor" means any individual, business, or group having a delinquent debt or account with any state 2917 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for 2918 2919 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after 2920 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or 2921 services by the Institution.

2922 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to 2923 whom the contract was awarded or to any subcontractor in the performance of the work provided for in 2924 such contract. 2925

§ 40. Exemptions. -

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2926 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any 2927 public utility tariffs prescribed by the State Corporation Commission.

2928 § 41. Retainage to remain valid. -

2929 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall 2930 remain valid. 2931

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

2932 A. The Institution shall promptly pay for the completely delivered goods or services by the required 2933 payment date.

2934 Payment shall be deemed to have been made when offset proceedings have been instituted, as 2935 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

Separate payment dates may be specified for contracts under which goods or services are 2936 2937 provided in a series of partial deliveries or executions to the extent that such contract provides for 2938 separate payment for such partial delivery or execution. 2939

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

2940 In instances where there is a defect or impropriety in an invoice or in the goods or services received, 2941 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would 2942 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the 2943 invoice or the goods or services. 2944

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

2945 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date 2946 payment is made for purposes of these Rules. 2947

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

Any contract awarded by the Institution shall include:

2949 1. A payment clause that obligates the contractor to take one of the two following actions within 2950 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the

2951 subcontractor under that contract:

2952 Pay the subcontractor for the proportionate share of the total payment received from the a. 2953 Institution attributable to the work performed by the subcontractor under that contract; or

2954 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the 2955 subcontractor's payment with the reason for nonpayment.

2956 2. A payment clause that requires (i) individual contractors to provide their social security numbers 2957 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 2958 numbers.

2959 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts 2960 owed by the contractor that remain unpaid after seven days following receipt by the contractor of 2961 payment from the Institution for work performed by the subcontractor under that contract, except for 2962 amounts withheld as allowed in subdivision 1.

2963 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, 2964 interest shall accrue at the rate of 1% per month."

2965 Any such contract awarded shall further require the contractor to include in each of its subcontracts a 2966 provision requiring each subcontractor to include or otherwise be subject to the same payment and 2967 interest requirements with respect to each lower-tier subcontractor.

2968 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause 2969 in this section shall not be construed to be an obligation of the Institution. A contract modification shall 2970 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement 2971 claim shall not include any amount for reimbursement for the interest charge.

2972 § 46. Interest penalty; exceptions. -

2973 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the 2974 Institution to a vendor that remain unpaid after seven days following the payment date. However, 2975 nothing in this section shall affect any contract providing for a different rate of interest, or for the 2976 payment of interest in a different manner.

2977 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on 2978 corporate loans (prime rate) at large United States money center commercial banks as reported daily in 2979 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of 2980 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 2981 interest established pursuant to § 58.1-1812 of the Code of Virginia.

2982 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 2983 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 2984 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 2985 exception from the interest penalty provided by this subsection shall apply only to that portion of a 2986 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 2987 the disagreement.

2988 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 2989 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 2990 contractor from receiving interest on such funds under an approved escrow agreement.

2991 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or 2992 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 2993 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the 2994 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 2995 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 2996 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days 2997 following the payment date. 2998

§ 47. Ineligibility. -

2999 Any bidder, offeror or contractor refused permission to participate, or disqualified from Α. 3000 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 3001 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 3002 3003 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 3004 requested by the bidder within five business days after receipt of the notice.

3005 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 3006 challenging the evaluation. The Institution shall issue its written determination of disgualification or 3007 ineligibility based on all information in the possession of the Institution, including any rebuttal 3008 information, within five business days of the date the Institution received such rebuttal information.

3009 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 3010 participate in the public contract, the Institution shall cancel the proposed disgualification action. If the 3011 evaluation reveals that the bidder should be refused permission to participate, or disqualified from

3012 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The

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

3017 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 3018 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 3019 restoration of eligibility.

3020 § 48. Appeal of denial of withdrawal of bid. -

3021 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final
3022 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by
3023 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by
3024 instituting legal action as provided in § 54.

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

3029 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

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§ 49. Determination of nonresponsibility. -

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

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

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3050 3. Such notice shall state the basis for the determination, which shall be final unless the bidder
3051 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures
3052 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action
3053 as provided in § 54.

3054 The provisions of this subsection shall not apply to procurements involving the prequalification of
 3055 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such
 3056 bidders are not responsible.

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

3063 If it is determined that the decision of the Institution was not an honest exercise of discretion, but
3064 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state
3065 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has
3066 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

3067 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract3068 shall proceed under this section, and may not protest the award or proposed award under the provisions3069 of § 50 of these Rules.

3070 D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

3073 § 50. Protest of award or decision to award. -

3074 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 3075 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 3076 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 3077 notice of the award or the announcement of the decision to award shall be given by the Institution in 3078 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 3079 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 3080 protest the award or decision to award such contract shall submit the protest in the same manner no 3081 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 3082 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part 3083 upon information contained in public records pertaining to the procurement transaction that are subject 3084 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 3085 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at 3086 such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest 3087 3088 and the relief sought. The Institution or designated official shall issue a decision in writing within 10 3089 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 3090 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting 3091 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as 3092 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the 3093 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of 3094 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 3095 standards of § 55 of these Rules.

3096 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it 3097 3098 to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or 3099 capricious, then the sole relief shall be as hereinafter provided.

3100 Where the award has been made but performance has not begun, the performance of the contract 3101 may be enjoined. Where the award has been made and performance has begun, the Institution may 3102 declare the contract void upon a finding that this action is in the best interest of the public. Where a 3103 contract is declared void, the performing contractor shall be compensated for the cost of performance up 3104 to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

3105 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing 3106 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to 3107 award was based on fraud or corruption or on an act in violation of these Rules, the Institution, 3108 designated official or appeals board may enjoin the award of the contract to a particular bidder. 3109

§ 51. Effect of appeal upon contract. -

3110 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in 3111 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has 3112 been filed. 3113

§ 52. Stay of award during protest. -

3114 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided 3115 3116 in § 54, no further action to award the contract shall be taken unless there is a written determination that 3117 proceeding without delay is necessary to protect the public interest or unless the bid or offer would 3118 expire. 3119

§ 53. Contractual disputes. -

3120 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 3121 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be 3122 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing 3123 herein shall preclude a contract from requiring submission of an invoice for final payment within a 3124 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment. 3125

3126 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 3127 Such procedure, which may be contained in the contract or may be specifically incorporated into the 3128 contract by reference and made available to the contractor, shall establish a time limit for a final 3129 decision in writing by the Institution. If the Institution has established administrative procedures meeting 3130 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically 3131 incorporated in the contract by reference and made available to the contractor. The Institution may 3132 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 3133 (ADR) as an administrative procedure.

3134 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these 3135 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's 3136 decision on the claim, unless the Institution fails to render such decision within the time specified in the 3137 contract.

3138 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within 3139 six months of the date of the final decision on the claim by the Institution by invoking administrative 3140 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting 3141 legal action as provided in § 54.

3142 § 54. Legal actions.

A bidder or offeror, actual or prospective, who is refused permission or disqualified from 3143 3144 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 3145 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest 3146 3147 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of 3148 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in 3149 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in 3150 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously 3151 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a 3152 responsible bidder, the court may direct the Institution to award the contract to such bidder in 3153 accordance with the requirements of this section and the Invitation to Bid.

3154 A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the 3155 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary 3156 3157 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, 3158 or the terms or conditions of the Invitation to Bid.

3159 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole 3160 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or 3161 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the 3162 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but 3163 3164 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state 3165 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

3166 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution. 3167

E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be 3168 3169 3170 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of 3171 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of 3172 Accounts.

3173 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of 3174 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, 3175 the procedures shall be exhausted prior to instituting legal action concerning the same procurement 3176 transaction unless the Institution agrees otherwise.

3177 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a 3178 contractor. 3179

§ 55. Administrative appeals procedure. -

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 3180 3181 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 3182 3183 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 3184 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 3185 disinterested person or panel, the opportunity to present pertinent information and the issuance of a 3186 written decision containing findings of fact. The disinterested person or panel shall not be an employee 3187 of the governmental entity against whom the claim has been filed. The findings of fact shall be final 3188 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) 3189 so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings 3190 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these 3191 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a 3192 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution 3193 Council in establishing an Alternative Dispute Resolution (ADR) procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 3194 3195 judicial review if such action is brought within 30 days of receipt of the written decision.

3196 § 56. Alternative dispute resolution. -

3197	The Institution may enter into agreements to submit disputes arising from contracts entered into
3198	pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution
3199	procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of
3200	Virginia, as applicable.
3201	§ 57. Ethics in public contracting
3202	The Institution and its governing body, officers and employees shall be governed by the Ethics in
3202	Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of
3203	Chapter 43 of Title 2.2 of the Code of Virginia.
3204	EXHIBIT L
3205	EXHIBIT E
3200	MANAGEMENT AGREEMENT
3207	BETWEEN
3209	THE COMMONWEALTH OF VIRGINIA
3210	AND
3211	THE COLLEGE OF WILLIAM AND MARY
3212	PURSUANT TO
3213	THE RESTRUCTURED HIGHER EDUCATION
3214	FINANCIAL AND ADMINISTRATIVE OPERATIONS
3215	ACT OF 2005
3216	
3217	POLICY GOVERNING
3218	FINANCIAL OPERATIONS AND MANAGEMENT
3219	
3220	THE RECTOR AND BOARD OF VISITORS
3221	OF THE COLLEGE OF WILLIAM AND MARY
3222	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
3223	I. PREAMBLE.
3224	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
3225	4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting
3226	additional authority to institutions of higher education for financial operations and management, subject
3227	to the adoption of policies by their governing boards and the approval of management agreements to be
3228	negotiated with the Commonwealth.
3229	The following provisions of this Policy constitute the adopted Board of Visitors policies regarding
3230	the College of William and Mary's financial operations and management.
3231	This Policy is intended to cover the authority that may be granted to the College pursuant to
3232	Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the
3233	Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
3234	and the College's Enabling Legislation, are not affected by this Policy.
3235	II. DEFINITIONS.
3236	As used in this policy, the following terms shall have the following meanings, unless the context
3237	requires otherwise:
3238	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
3239	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
3240	"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William
3241	and Mary and the Virginia Institute of Marine Science.
3242	"College" means the College of William and Mary (State Agency 204) and the Virginia Institute of
3243	Marine Science (State Agency 268).
3244	"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
3245	the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
3246	entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subabartar 2 of the Act
3247 3248	Subchapter 3 of the Act.
3240	"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
3250	of the College.
3250	"Effective Date" means the effective date of the initial Management Agreement between the College
3252	and the Commonwealth.
3252 3253	"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
3253 3254	between the College and the Commonwealth of Virginia.
3255	"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
3256	9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
3257	general government funds, as defined in the December 20, 2004 Report to the Governor and General
5201	Seneral Seveniment funds, as defined in the December 20, 2004 Report to the Governor and General

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3258 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time. 3259 III. SCOPE OF POLICY.

3260 This Policy applies to the College's responsibility for management, investment and stewardship of all 3261 its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, 3262 3263 and internal controls adequate to protect and account for the College's financial resources.

3264 The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it 3265 is implemented by the College on behalf of the Institute, but the Institute shall not receive any 3266 additional independent financial operations and management authority as a result of this Management 3267 Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the College's initial Management Agreement with the Commonwealth or that it 3268 3269 may be granted by law in the future.

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IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

3271 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the 3272 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 3273 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 3274 3275 the duties and responsibilities set forth in this Policy to a person or persons within the College, who, 3276 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 3277 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 3278 and procedures. 3279

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

3280 The President, or designee, shall continue to be authorized by the Board to maintain existing and 3281 implement new policies governing the management of College financial resources. These policies shall 3282 continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency 3283 with the current accounting principles employed by the Commonwealth, including the use of fund 3284 accounting principles, with regard to the establishment of the underlying accounting records of the 3285 College and the allocation and utilization of resources within the accounting system, including the 3286 relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with 3287 regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide 3288 adequate risk management and internal controls to protect and safeguard all financial resources, 3289 including moneys transferred to the College pursuant to a general fund appropriation, and ensure 3290 compliance with the requirements of the Appropriation Act.

3291 The financial management system shall continue to include a financial reporting system to satisfy 3292 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 3293 as specified in the related State Comptroller's Directives, and the College's separately audited financial 3294 statements. To ensure observance of limitations and restrictions placed on the use of the resources 3295 available to the College, the accounting and bookkeeping system of the College shall continue to be 3296 maintained in accordance with the principles prescribed for governmental organizations by the 3297 Governmental Accounting Standards Board.

3298 In addition, the financial management system shall continue to provide financial reporting for the 3299 President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the 3300 financial operations of the College. Upon the Effective Date of the initial Management Agreement 3301 between the College and the Commonwealth, except for the recordation of daily revenue deposits of 3302 State funds as specified in Section VII below, the College shall not be required to record its financial transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the 3303 current monthly interfacing with CARS, or be a part of any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting 3304 3305 3306 system. The College's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and 3307 3308 Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the 3309 State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on 3310 Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, 3311 and using such format that is compatible with the Commonwealth's accounting system, as may be 3312 requested by the requesting State agency, and (ii) such other special reports as may be requested from 3313 time to time.

VI. FINANCIAL MANAGEMENT POLICIES.

3315 The President, or designee, shall create and implement any and all financial management policies 3316 necessary to establish a financial management system with adequate risk management and internal 3317 control processes and procedures for the effective protection and management of all College financial resources. Such policies will not address the underlying accounting principles and policies employed by 3318 3319 the Commonwealth and the College, but rather will focus on the internal operations of the College's

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3320 financial management. These policies shall include, but need not be limited to, the development of a 3321 tailored set of finance and accounting practices that seek to support the College's specific business and 3322 administrative operating environment in order to improve the efficiency and effectiveness of its business 3323 and administrative functions. In general, the system of independent financial management policies shall 3324 be guided by the general principles contained in the Commonwealth's Accounting Policies and 3325 Procedures such as establishing strong risk management and internal accounting controls to ensure 3326 College financial resources are properly safeguarded and that appropriate stewardship of public funds is 3327 obtained through management's oversight of the effective and efficient use of such funds in the 3328 performance of College programs.

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

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

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

3338 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher 3339 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 3340 Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for 3341 3342 by that subsection and approved as part of the Appropriation Act then in effect for the State goals and 3343 objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 3344 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year 3345 for which the financial and administrative management and educational-related performance benchmarks 3346 described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal 3347 years thereafter, each public institution of higher education of the Commonwealth that (i) has been 3348 certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and 3349 (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain financial 3350 incentives, including interest on the tuition and fees and other non-general fund Education and General 3351 Revenues deposited into the State Treasury by the public institution of higher education.

3352 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
3353 which it has received such certification from SCHEV, the College is authorized to hold and invest
3354 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise
3355 funds, and all other non-general fund revenues subject to the following requirements:

i) The College shall deposit such funds in the State Treasury pursuant to the State process in placeat the time of such deposit;

3358 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section3359 IX below;

3360 iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold 3361 in escrow all interest earned on the College's tuition and fees and other non-general fund Educational 3362 and General Revenues. Interest earned on the escrow account shall be deposited to the account. Upon 3363 receipt of the required State Council of Higher Education for Virginia certification that the College has 3364 met such institutional performance benchmarks and the conditions prescribed in subsection B of 3365 § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable 3366 no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the 3367 escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the 3368 College may expend the funds for purposes related to its mission. If public institutions of higher 3369 education of the Commonwealth are permitted, or the College in particular is permitted, by the 3370 Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned 3371 on sponsored programs and research funds, then this paragraph shall not apply to such interest on such 3372 funds, and such interest shall not be held in escrow.

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

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

entered into a Management Agreement with the Commonwealth. 3381

3382 vi) On the first business day of the first fiscal year following the fiscal year for which it has 3383 received the required certification from SCHEV, the College may draw down all cash balances held by 3384 the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored 3385 programs, auxiliary enterprises, and all other non-general fund revenues.

3386 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay 3387 these funds to the College as specified in Section IX below.

3388 The College also shall have sum sufficient appropriation authority for all non-general funds as 3389 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 3390 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 3391 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 3392 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be 3393 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 3394 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the 3395 Department of Planning and Budget by July 31 of the subsequent fiscal year.

3396 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 3397 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 3398 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the 3399 intent of the Commonwealth and the College that the College shall be exempt from the revenue 3400 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, 3401 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the 3402 College that the College shall be entitled to retain non-general fund savings generated from changes in 3403 Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such 3404 3405 savings back to the Commonwealth. This financial resource policy assists the College by providing the 3406 framework for retaining and managing non-general funds, for the receipt of general funds, and for the 3407 use and stewardship of all these funds.

3408 The President, or designee, shall continue to provide oversight of the College's cash management 3409 system which is the framework for the retention of non-general funds. The Internal Audit Department of 3410 the College shall periodically audit the College's cash management system in accordance with 3411 appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. 3412 Additional oversight shall continue to be provided through the annual audit and assessment of internal 3413 controls performed by the Auditor of Public Accounts.

3414 For the receipt of general and non-general funds, the College shall conform to the Security for Public 3415 Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia, as it currently exists 3416 and from time to time may be amended. 3417

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

3418 The President, or designee, shall continue to be authorized to create and implement any and all 3419 Accounts Receivable Management and Collection policies as part of a system for the management of 3420 College financial resources. The policies shall be guided by the requirements of the Virginia Debt 3421 Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the College shall take 3422 all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

3423 These shall include, but not be limited to, establishing the criteria for granting credit to College 3424 customers; establishing the nature and timing of collection procedures within the above general 3425 principles; and the independent authority to select and contract with collection agencies and, after 3426 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 3427 collection activities for all College accounts receivable such as reporting delinquent accounts to credit 3428 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 3429 accordance with sound collection activities, the College shall continue to utilize the Commonwealth's 3430 Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax 3431 Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly 3432 summary report of receivables to the Department of Accounts in accordance with the reporting 3433 procedures established pursuant to the Virginia Debt Collection Act. 3434

IX. DISBURSEMENT MANAGEMENT.

3435 The President, or designee, shall continue to be authorized to create and implement any and all 3436 disbursement policies as part of a system for the management of College financial resources. The 3437 disbursement management policies shall continue to define the appropriate and reasonable uses of all 3438 funds, from whatever source derived, in the execution of the College's operations. These policies also 3439 shall continue to address the timing of appropriate and reasonable disbursements consistent with the 3440 Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's 3441 mission, including travel-related disbursements. Further, the College's disbursement policy shall continue 3442 to provide for the mechanisms by which payments are made including the use of charge cards, warrants, 3443 and electronic payments. Since the College no longer will interface to the CARS system or any 3444 replacement for the CARS system for disbursements, the College shall establish its own mechanisms for 3445 electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and 3446 payments to the Commonwealth's Debt Set Off Collection Programs.

3447 Beginning with the fiscal year after the first fiscal year for which it first receives the required 3448 certification from SCHEV, the College may draw down its general fund appropriations (subject to 3449 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.

3450 Such funds shall be available to the College for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance 3451 3452 with the following schedule:

3453 i) The College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for 3454 Educational and General programs on or about the first and fifteenth days of each month with 3455 adjustments as needed to meet short-term cash requirements associated with the Commonwealth's 3456 bimonthly pay dates, and up to 50% of its annual general fund appropriation for Student Financial 3457 Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after 3458 February 1 of each year in order to meet student obligations;

3459 ii) The College may draw down the sum of all tuition and E&G fees and all other non-general 3460 revenues deposited to the State Treasury each day on the same business day they were deposited; and

3461 iii) The College anticipates that expenditures could exceed available revenues from time to time 3462 during the year if the above disbursement schedule is used. When the College projects a cost deficit in 3463 activities supported by general fund appropriations, the College may make a request to the State 3464 Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a 3465 form and within a timeframe agreeable to the parties, in order to cover expenditures.

3466 These disbursement policies shall authorize the President, or designee, to independently select, 3467 engage, and contract for such consultants, accountants, and financial experts, and other such providers of 3468 expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to 3469 3470 include the ability to locally manage and administer the Commonwealth's credit card and cost recovery 3471 programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts 3472 governing those programs, provided that the College shall submit the credit card and cost recovery 3473 aspects of its financial and operations policies to the State Comptroller for review and comment prior to 3474 implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk 3475 management and internal control procedures shall be maintained over previously decentralized processes 3476 The College shall continue to provide for public records, payroll, and non-payroll disbursements. 3477 summary quarterly prompt payment reports to the Department of Accounts in accordance with the 3478 reporting procedures established pursuant to the Prompt Payment Act.

3479 The College's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date 3480 3481 of its initial Management Agreement with the Commonwealth, the College shall continue to follow the 3482 Commonwealth's disbursement policies until such time as specific alternative policies can be developed, 3483 approved and implemented. Such alternate policies shall be submitted to the State Comptroller for 3484 review and comment prior to their implementation by the College. 3485

X. DEBT MANAGEMENT.

3486 The President, or designee, shall continue to be authorized to create and implement any and all debt 3487 management policies as part of a system for the management of College financial resources.

3488 Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or 3489 other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, 3490 and that are consistent with debt capacity and management policies and guidelines established by its 3491 Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, 3492 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any 3493 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided 3494 that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 3495 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised 3496 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 3497 comment prior to its adoption by the College.

3498 The College recognizes that there are numerous types of financing structures and funding sources 3499 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 3500 the President, or designee, within the context of the overall portfolio to ensure that any financial product 3501 or structure is consistent with the College's objectives. Regardless of the financing structure(s) utilized, 3502 the President, or designee, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the 3503

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3504 impact on College creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act, shall be authorized by resolution 3505 3506 of the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

3507 The College will establish guidelines relating to the total permissible amount of outstanding debt by 3508 monitoring College-wide ratios that measure debt compared to College balance-sheet resources and 3509 annual debt service burden. These measures will be monitored and reviewed regularly in light of the 3510 College's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the College's debt capacity and debt management guidelines. 3511 Any change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to 3512 3513 their adoption by the College.

XI. INVESTMENT POLICY.

It is the policy of the College to invest its operating and reserve funds solely in the interest of the 3515 3516 College and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act 3517 3518 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence 3519 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and 3520 familiar with such matters would use in the conduct of an enterprise of a like character and with like 3521 aims.

3522 Endowment investments shall be invested and managed in accordance with the Uniform Management 3523 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

3524 The Board of Visitors shall periodically review and approve the investment guidelines governing the 3525 College's operating and reserve funds. 3526

XII. INSURANCE AND RISK MANAGEMENT.

3527 By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any 3528 intent during the next biennium to withdraw from any insurance or risk management program made available to the College through the Commonwealth's Division of Risk Management and in which the 3529 3530 College is then participating, to enable the Commonwealth to complete an adverse selection analysis of 3531 any such decision and to determine the additional costs to the Commonwealth that would result from 3532 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College proceeds to withdraw from the insurance or risk management program, the College shall reimburse the 3533 3534 Commonwealth for all such additional costs attributable to such withdrawal, as determined by the 3535 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and 3536 the Commonwealth.

3537 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 3538 30, 20102012, provided that on or before November 15, 2011, the Governor provides to the Chairmen 3539 of the House Committee on Appropriations and the Senate Committee on Finance written notification 3540 that this Management Agreement needs to be renegotiated or revised. If such notification is not 3541 received, this Management Agreement shall continue in effect until June 30, 2015. 3542

EXHIBIT M MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS **ACT OF 2005**

POLICY GOVERNING CAPITAL PROJECTS

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, 3559 3560 respectively) delegated limited but significant autonomy to the University of Virginia to establish its own post-appropriation system for undertaking the implementation of non-general fund capital projects 3561 for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act, 3562 delegated nearly identical limited autonomy to the University as a whole for non-general fund capital 3563 3564 projects. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the Existing Policy 3565

3566 Statement).

3567 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 3568 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the 3569 3570 implementation of its capital projects. In general, status as a Covered Institution is designed to replace 3571 the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of 3572 central State agencies, and also the traditional pre-authorization approval process for projects funded 3573 entirely with non-general funds and without any proceeds from State Tax Supported Debt. The 3574 University's system for carrying out its capital outlay process as a Covered Institution is to be governed 3575 by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the 3576 Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition 3577 of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, 3578 Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted 3579 Board of Visitors policies regarding the University's capital projects, whether funded by a state general 3580 fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy. II. DEFINITIONS.

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

3590 "Academic Division" means that part of the University known as (State Agency 207).

3591 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,3592 Chapter 4.10 of Title 23 of the Code of Virginia.

3593 "Board of Visitors" or "Board" means the Rector and Visitors of the University of Virginia.

3594 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting 3595 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

3596 "Capital Professional Services" means professional engineering, architecture, land surveying and 3597 landscape architecture services related to capital projects.

3598 "Capital project(s)" means the acquisition of any interest in land, including improvements on the
 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital
 3600 Leases.

3601 "College" means that part of the University operated as the University of Virginia's College at Wise,also known as (State Agency 246).

3603 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
3604 public institution of higher education of the Commonwealth of Virginia that has entered into a
3605 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
3606 the Act.

3607 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
3608 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
3609 of the individual public institutions of higher education of the Commonwealth, and as provided in
3610 §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.

3611 "Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation3612 Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.

3613 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
3614 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
3615 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

3616 "Medical Center" means that part of the University consisting of the University of Virginia Medical3617 Center (State Agency 209), and related health care and health maintenance facilities.

3618 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
3619 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
3620 general government funds, as defined in the December 20, 2004 Report to the Governor and General
3621 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

3622 "University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

3624 III. SCOPE OF POLICY.

3625 This Policy applies to the planning and budget development for capital projects, capital project 3626 authorization, and the implementation of capital projects, whether funded by a general fund

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3627 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other 3628 sources.

3629 This Policy provides guidance for 1) the process for developing one or more capital project programs 3630 for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) 3631 3632 environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) 3633 building and land dispositions, 9) project management systems, and 10) reporting requirements.

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY. 3634

3635 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 3636 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 3637 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 3638 3639 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 3640 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 3641 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 3642 and procedures.

V. CAPITAL PROGRAM.

3644 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a 3645 system for developing one or more capital project programs that defines or define the capital needs of 3646 the University for a given period of time consistent with the University's published Master Plan. This 3647 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of 3648 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be 3649 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board 3650 3651 may approve amendments to the program for Major Capital Projects annually or more often if 3652 circumstances warrant.

3653 It shall be University policy that each capital project program shall meet the University's mission and 3654 institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined 3655 program needs, designed in accordance with all applicable building codes and handicapped accessibility 3656 3657 standards as well as the University's design guidelines and standards, and costed to reflect current costs 3658 and escalated to the mid-point of anticipated construction. 3659

VI. AUTHORIZATION OF CAPITAL PROJECTS

3660 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief 3661 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other 3662 3663 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund 3664 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 3665 Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies 3666 then applicable, and shall follow the State's process for capital budget requests.

It shall be the policy of the University that the implementation of capital projects shall be carried out 3667 3668 so that the capital project as completed is the capital project approved by the Board for Major Capital 3669 Projects and according to the procedures adopted by the President, acting through the Executive Vice 3670 President and Chief Operating Officer, for all other capital projects. The President, acting through the 3671 Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement.

Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond 3672 3673 the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they 3674 3675 are determined by the President, acting through the Executive Vice President and Chief Operating 3676 Officer, to be justified.

3677 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must 3678 include a statement of urgency if not part of the approved Major Capital Project program.

3679 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 3680 SERVICES.

3681 It shall be the policy of the University that procurements shall result in the purchase of high quality 3682 services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 3683 3684 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and 3685 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed 3686 to:

3687 Seeking competition to the maximum practical degree, taking into account the size of the anticipated 3688 procurement, the term of the resulting contract and the likely extent of competition;

3689 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;

3691 Making procurement rules clear in advance of any competition;

3692 Providing access to the University's business to all qualified vendors, firms and contractors, with no
 3693 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in
 3694 cooperative procurements and to meet special needs of the University;

3695 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
 3696 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
 3697 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
 3698 necessary to the contractor's normal operations; and

3699 Providing for a non-discriminatory procurement process, and including appropriate and lawful
 3700 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small
 3701 businesses and to promote and encourage a diversity of suppliers.

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

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

3709 A prequalification procedure for contractors or products;

3710 A procedure for special construction contracting methods, including but not limited to design-build3711 and construction management contracts; and

3712 A prompt payment procedure.

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

3716 VIII. DESIGN REVIEWS AND CODE APPROVALS.

3717 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final 3718 Major Capital Project authorization based on the size, scope and cost estimate provided with the design. 3719 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be 3720 required. For all capital projects other than Major Capital Projects, the President, acting through the 3721 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and 3722 project authorization based on the size, scope and cost estimate provided with the design. It shall be the 3723 University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable 3724 3725 accessibility code.

3726 The President, acting through the Executive Vice President and Chief Operating Officer, shall 3727 designate a Building Official responsible for building code compliance by either (i) hiring an individual 3728 to be the University Building Official, or (ii) continuing to use the services of the Department of 3729 General Services, Division of Engineering and Buildings, to perform the Building Official function. If 3730 option (i) is selected, the individual hired as the University Building Official shall be a full-time 3731 employee, a registered professional architect or engineer, and certified by the Department of Housing 3732 and Community Development to perform this Building Official function. The University Building 3733 Official shall issue building permits for each capital project required by the VUSBC to have a building 3734 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building 3735 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, 3736 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital 3737 project and that such capital project has been inspected by the State Fire Marshal or his designee as *required.* When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building 3738 3739 3740 Official, it shall fulfill the code review requirement by maintaining a review unit of licensed professional 3741 architects or engineers supported by resources and staff who are certified by the Department of Housing 3742 and Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose 3743 and who shall review plans, specifications and documents for compliance with building codes and 3744 standards and perform required inspections of work in progress and the completed capital project. No 3745 individual licensed professional architect or engineer hired under the University's personnel system as a 3746 member of the review unit or contracted with to perform these functions shall also perform other 3747 building code-related design, construction, facilities-related project management or facilities management 3748 functions for the University on the same capital project.

3749 IX. ENVIRONMENTAL IMPACT REPORTS.

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3750 It shall be the policy of the University to assess the environmental, historic preservation, and 3751 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts 3752 to the extent practicable. The University shall develop a procedure for the preparation and approval of 3753 environmental impact reports for capital projects, in accordance with State environmental, historic 3754 preservation, and conservation requirements generally applicable to capital projects otherwise meeting 3755 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of 3756 \$300,000 or more.

X. BUILDING DEMOLITIONS.

3758 It shall be the policy of the University to consider the environmental and historical aspects of any 3759 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.

The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural 3760 3761 3762 Review Board in accordance with State historic preservation requirements generally applicable to capital 3763 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported 3764 3765 Debt, general laws applicable to State owned property shall apply. 3766

XI. BUILDING OR LAND ACOUISITIONS.

It is the policy of the University that capital projects involving building or land acquisition shall be 3767 3768 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. 3769 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure 3770 that the project management system implemented pursuant to Section XIII below provides for a review 3771 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be 3772 3773 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to 3774 the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is 3775 3776 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies 3777 3778 pertaining to the acquisition of buildings or land for capital projects are carried out. 3779

A. Environmental and Land Use Considerations.

3780 It is the policy of the University to reasonably cooperate with each locality affected by the 3781 acquisition. Such cooperation shall include but not be limited to furnishing any information that the 3782 locality may reasonably request and reviewing any requests by the locality with regard to any such 3783 acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies 3784 of historically or archeologically significant areas on the land. Nothing herein shall be construed as 3785 3786 requiring the University to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

3788 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure 3789 that, in the case of capital projects involving the acquisition of buildings or land, the project 3790 management systems implemented under Section XIII below provide for a review of the following 3791 matters prior to acquisition of the building or land: that any land can be developed for its intended 3792 purpose without extraordinary cost; that an environmental engineer has been engaged by the University 3793 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular 3794 ingress and egress to serve the contemplated use of the building or land; that utilities and other services 3795 to the land are adequate or can reasonably be provided or have been provided in the case of building 3796 acquisitions; and that the condition and grade of the soils have been examined to determine if any 3797 conditions exist that would require extraordinary site work or foundation systems. 3798

C. Title and Survey.

3799 A survey shall be prepared for any real property acquired, and an examination of title to the real 3800 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title 3801 insurance shall be procured from a title insurance company authorized to do business in the 3802 Commonwealth. Based upon the survey and title examination or report, the President, acting through the 3803 Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real 3804 property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, 3805 encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse 3806 effect upon the University's ability to own, occupy, convey or develop the real property.

3807 D. Appraisal.

3808 An appraisal shall be conducted of the real property to be acquired to determine its fair market value 3809 and the consistency of the fair market value with the price agreed upon by the University.

3810 XII. BUILDING OR LAND DISPOSITIONS.

3811 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or

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3812 buildings, the acquisition or construction of which was funded entirely or in part by a general fund 3813 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 3814 Board of Visitors approval and other approvals in accordance with general law applicable to 3815 State-owned property and with the University's Enabling Legislation.

3816 XIII. PROJECT MANAGEMENT SYSTEMS.

3817 The President, acting through the Executive Vice President and Chief Operating Officer, shall 3818 implement one or more systems for the management of capital projects for the University. The systems 3819 may include the delegation of project management authority to appropriate University officials, including 3820 a grant of authority to such officials to engage in further delegation of authority as the President, acting 3821 through the Executive Vice President and Chief Operating Officer, deems appropriate.

3822 The project management systems for capital projects shall be designed to ensure that such projects 3823 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely 3824 related subjects such as selection of architects or policies applicable to University buildings and grounds. 3825 The project management systems may include one or more reporting systems applicable to capital 3826 projects whereby University officials responsible for the management of such projects provide

3827 appropriate and timely reports to the President, acting through the Executive Vice President and Chief 3828 Operating Officer, on the status of such projects during construction. 3829

XIV. REPORTING REQUIREMENTS.

3830 In addition to complying with any internal reporting systems contained in the University's project 3831 management systems, as described in Section XIII above, the University shall comply with State 3832 reporting requirements for those Major Capital Projects funded entirely or in part by a general fund 3833 appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project 3834 constructs improvements on land, or renovates property, that originally was acquired or constructed in 3835 whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not 3836 appropriated by the General Assembly and, if the cost of such improvements or renovations is 3837 3838 reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, 3839 3840 the President, acting through the Executive Vice President and Chief Operating Officer, shall report to 3841 the Department of General Services on the status of such capital projects at the initiation of the project, 3842 prior to the commencement of construction, and at the time of acceptance of any such capital project. 3843 ATTACHMENT 1

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by a Public Institution of Higher Education of the Commonwealth of Virginia Governed by Subchapter 3 of the

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

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

In accordance with the provisions of the Restructured Higher Education Financial and Administrative 3850 3851 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in 3852 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the 3853 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth 3854 pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, 3855 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and 3856 construction by the Institution, excluding the University of Virginia Medical Center:

3857 § 1. Purpose. -

3858 The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, 3859 services, insurance, and construction by the Institution from nongovernmental sources, to include 3860 governmental procurement that may or may not result in monetary consideration for either party. These 3861 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the 3862 Institution, the contractor, or some third party is providing the consideration.

3863 § 2. Scope of Procurement Authority. -

3864 Subject to these Rules, and the Institution's continued substantial compliance with the terms and 3865 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the 3866 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and 3867 exercise all of the authority relating to procurement of goods, services, insurance, and construction, 3868 including but not limited to capital outlay-related procurement and information technology-related 3869 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring 3870 Act.

3871 § 3. Competition is the Priority. -

3872 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all 3887

3873 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any 3874 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's 3875 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body 3876 of the Institution that competition be sought to the maximum feasible degree, that procurement 3877 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad 3878 flexibility in fashioning details of such competition, that the rules governing contract awards be made 3879 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing 3880 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely 3881 exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not 3882 construction or professional services. Professional services will be procured using a qualification-based 3883 selection process. The criteria, factors, and basis for consideration of best value and the process for the 3884 3885 consideration of best value shall be as stated in the procurement solicitation. 3886

§ 4. Definitions. -

As used in these Rules:

3888 "Affiliate" means an individual or business that controls, is controlled by, or is under common 3889 control with another individual or business. A person controls an entity if the person owns, directly or 3890 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition 3891 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 3892 members of the board of directors or similar governing body of the business or (ii) is convertible into, 3893 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 3894 partnership interest shall be deemed to be a voting security.

3895 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 3896 and various elements of required services that in total are optimal relative to the Institution's needs.

3897 "Business" means any type of corporation, partnership, limited liability company, association, or sole 3898 proprietorship operated for profit. 3899

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

3900 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 3901 procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique 3902 3903 capabilities or qualifications that will be required of the contractor.

3904 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 3905 proposals by publication in a newspaper or newspapers of general circulation in the area in which the 3906 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 3907 can be reasonably anticipated to submit proposals in response to the particular request. Public notice 3908 also shall be published on the Department of General Services' central electronic procurement website 3909 and may be published on other appropriate websites. In addition, proposals may be solicited directly 3910 from potential contractors.

3911 3. a. Procurement of professional services. The procurement of professional services for capital 3912 projects shall be conducted using a qualification-based selection process. The Institution shall engage in 3913 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 3914 basis of initial responses and with emphasis on professional competence, to provide the required 3915 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 3916 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, 3917 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors 3918 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss 3919 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this 3920 3921 3922 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information 3923 developed in the selection process to this point, the Institution shall select in the order of preference two 3924 or more offerors whose professional qualifications and proposed services are deemed most meritorious. 3925 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory

and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the 3926 3927 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be 3928 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a 3929 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and 3930 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly 3931 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to 3932 that offeror.

3933 A contract for architectural or professional engineering services relating to construction projects may 3934 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience

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

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

b. Procurement of other than professional services. Selection shall be made of two or more offerors 3949 3950 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 3951 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 3952 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but 3953 need not be the sole determining factor. After negotiations have been conducted with each offeror so 3954 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 3955 shall award the contract to that offeror. When the terms and conditions of multiple awards are so 3956 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 3957 Institution determine in writing and in its sole discretion that only one offeror has made the best 3958 proposal, a contract may be negotiated and awarded to that offeror.

3959 "Competitive sealed bidding" is a method of contractor selection, other than for professional services,3960 which includes the following elements:

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

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

3. Public opening and announcement of all bids received.

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3975 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include
3976 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria
3977 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

3979 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

3981 "Construction" means building, altering, repairing, improving or demolishing any structure, building3982 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

3983 "Construction management contract" means a contract in which a party is retained by the owner to
3984 coordinate and administer contracts for construction services for the benefit of the owner, and may also
3985 include, if provided in the contract, the furnishing of construction services to the owner.

3986 "Covered Institution" or "Institution" means, on and after the effective date of the initial management
3987 agreement with the Commonwealth of Virginia, a public institution of higher education of the
3988 Commonwealth that has entered into a management agreement with the Commonwealth to be governed
3989 by the provisions of Subchapter 3 of the Restructuring Act.

3990 "Design-build contract" means a contract between the Institution and another party in which the party
3991 contracting with the Institution agrees to both design and build the structure, roadway or other item
3992 specified in the contract.

3993 "Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.

3995 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of

3996 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or 3997 delivery schedule for the goods, services or construction being procured.

3998 "Multiphase professional services contract" means a contract for the providing of professional 3999 services where the total scope of work of the second or subsequent phase of the contract cannot be 4000 specified without the results of the first or prior phase of the contract.

4001 "Nonprofessional services" means any services not specifically identified as professional services in 4002 the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall 4003 4004 still apply to professional services for such small construction projects.

"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at 4005 4006 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the 4007 4008 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who 4009 would have been eligible and qualified to submit a bid or proposal had the contract been procured 4010 through competitive sealed bidding or competitive negotiation.

4011 "Professional services" means work performed by an independent contractor within the scope of the 4012 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 4013 dentistry, medicine, optometry, pharmacy or professional engineering.

4014 "Public body" means any legislative, executive or judicial body, agency, office, department, authority, 4015 post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the 4016 activities described in these Rules. 4017

4018 "Public contract" means an agreement between the Institution and a nongovernmental source that is 4019 enforceable in a court of law.

'Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform 4020 4021 fully the contract requirements and the moral and business integrity and reliability that will assure good 4022 faith performance, and who has been prequalified, if required.

4023 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects 4024 to the Invitation to Bid.

4025 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative 4026 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction 4027 4028 adopted by the governing body of the Covered Institution.

4029 Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified 4030 goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 4031 4032 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 4033 established for bid opening.

4034 "Services" means any work performed by an independent contractor wherein the service rendered 4035 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials 4036 and supplies.

"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working 4037 4038 environment and individual goals that utilizes work experience and related services for assisting the 4039 handicapped person to progress toward normal living and a productive vocational status. 4040

§ 5. Methods of procurement. -

4041 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 4042 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or 4043 competitive negotiation as provided in this section, unless otherwise authorized by law.

4044 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 4045 shall be used for design services. 4046

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

4047 Construction may be procured only by competitive sealed bidding, except that competitive D. 4048 negotiation may be used in the following instances upon a determination made in advance by the 4049 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally 4050 advantageous to the public, which writing shall document the basis for this determination: 4051

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

4052 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or

4053 By the Institution for the construction of highways and any draining, dredging, excavation, 3. 4054 grading or similar work upon real property.

E. Upon a determination in writing that there is only one source practicably available for that which 4055 4056 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed 4057 bidding or competitive negotiation. The writing shall document the basis for this determination. The

4058 Institution shall issue a written notice stating that only one source was determined to be practicably 4059 available, and identifying that which is being procured, the contractor selected, and the date on which 4060 the contract was or will be awarded. This notice shall be posted in a designated public area, which may 4061 be the Department of General Services' website for the Commonwealth's central electronic procurement 4062 system, or published in a newspaper of general circulation on the day the Institution awards or 4063 announces its decision to award the contract, whichever occurs first. Public notice shall also be 4064 published on the Department of General Services' website for the Commonwealth's central electronic 4065 procurement system and may be published on other appropriate websites.

4066 F. In case of emergency, a contract may be awarded without competitive sealed bidding or 4067 competitive negotiation; however, such procurement shall be made with such competition as is 4068 practicable under the circumstances. A written determination of the basis for the emergency and for the 4069 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 4070 written notice stating that the contract is being awarded on an emergency basis, and identifying that 4071 which is being procured, the contractor selected, and the date on which the contract was or will be 4072 awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published 4073 4074 in a newspaper of general circulation on the day the Institution awards or announces its decision to 4075 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also 4076 be published on the Department of General Services' website for the Commonwealth's central electronic 4077 procurement system and other appropriate websites.

4078 G. The Institution may establish purchase procedures, if adopted in writing, not requiring
4079 competitive sealed bids or competitive negotiation for single or term contracts for goods and services
4080 other than professional services if the aggregate or the sum of all phases is not expected to exceed
4081 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

4082 H. The Institution may establish purchase procedures, if adopted in writing, not requiring
4083 competitive negotiation for single or term contracts for professional services if the aggregate or the sum
4084 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide
4085 for competition wherever practicable.

4086 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase
4087 of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.

4090 J. The purchase of goods or nonprofessional services, but not construction or professional services, **4091** may be made by reverse auctioning.

4092 § 6. Cooperative procurement. -

4093 A. In circumstances where the Institution determines and documents that statewide contracts for 4094 goods and services, including information technology and telecommunications goods and services, do not 4095 provide goods and services to the Institution that meet its business goals and objectives, the Institution is 4096 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on 4097 behalf of or in conjunction with public bodies, public or private health or educational institutions, other 4098 public or private organizations or entities, including public-private partnerships, charitable organizations, 4099 health care provider alliances or purchasing organizations or entities, or with public agencies or 4100 institutions or group purchasing organizations of the several states, territories of the United States, or the 4101 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce 4102 administrative expense in any acquisition of goods and services, other than professional services. The 4103 Institution may purchase from any authority, department, agency, institution, city, county, town, or other 4104 political subdivision of the Commonwealth's contract even if it did not participate in the request for 4105 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the 4106 procurement was being conducted on behalf of other public bodies. In such instances, deviation from 4107 the procurement procedures set forth in these Rules and the administrative policies and procedures 4108 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of 4109 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic 4110 procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for 4111 4112 participation in any such arrangement.

4113 B. In circumstances where statewide contracts for goods and services, including information 4114 technology and telecommunications goods and services, do not provide goods and services to meet the 4115 Institution's business goals and objectives, and as authorized by the United States Congress and 4116 consistent with applicable federal regulations, and provided the terms of the contract permit such 4117 purchases:

4118 1. The Institution may purchase goods and nonprofessional services, from a United States General

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4119 Services Administration contract or a contract awarded by any other agency of the United States 4120 government; and

4121 The Institution may purchase telecommunications and information technology goods and 2. 4122 nonprofessional services from a United States General Services Administration contract or a contract 4123 awarded by any other agency of the United States government.

4124 § 7. Design-build or construction management contracts authorized. -

4125 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed 4126 price design-build basis or construction management basis in accordance with the provisions of this 4127 section.

4128 B. Procurement of construction by the design-build or construction management method shall be a 4129 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 4130 qualifications. Based upon the information submitted and any other relevant information which the 4131 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 4132 selected by the Commonwealth and requested to submit proposals. 4133

§ 8. Modification of the contract. -

4134 A. A contract awarded by the Institution may include provisions for modification of the contract 4135 during performance, but no fixed-price contract may be increased by more than 25% of the amount of 4136 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's 4137 president or his designee. In no event may the amount of any contract, without adequate consideration, 4138 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 4139 an error in its bid or offer.

4140 B. The Institution may extend the term of an existing contract for services to allow completion of 4141 any work undertaken but not completed during the original term of the contract.

4142 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 4143 modifications. 4144

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

4145 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 4146 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 4147 4148 Institution shall include businesses selected from a list made available by the Department of Minority 4149 **Business** Enterprise.

4150 B. The Institution shall establish programs consistent with this section to facilitate the participation 4151 of small businesses and businesses owned by women and minorities in procurement transactions. The 4152 programs established shall be in writing and shall include cooperation with the Department of Minority 4153 Business Enterprise, the United States Small Business Administration, and other public or private 4154 agencies. The Institution shall submit annual progress reports on minority business procurement to the 4155 Department of Minority Business Enterprise.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 4156 4157 analysis that documents a statistically significant disparity between the availability and utilization of 4158 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 4159 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 4160 law.

4161 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 4162 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 4163 that employing ex-offenders on the specific contract is not in its best interest. 4164

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

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

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

a. The contractor will not discriminate against any employee or applicant for employment because of 4167 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to 4168 4169 discrimination in employment, except where there is a bona fide occupational qualification reasonably 4170 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, 4171 available to employees and applicants for employment, notices setting forth the provisions of this 4172 nondiscrimination clause.

4173 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 4174 contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 4175 4176 shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 4177 4178 4179 subcontractor or vendor.

4180 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. - 4181 The Institution shall include in every contract over \$10,000 the following provisions:

4182 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace 4183 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 4184 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 4185 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 4186 workplace and specifying the actions that will be taken against employees for violations of such 4187 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 4188 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the 4189 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 4190 binding upon each subcontractor or vendor.

4191 For the purposes of this section, "drug-free workplace" means a site for the performance of work 4192 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 4193 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 4194 dispensation, possession or use of any controlled substance or marijuana during the performance of the 4195 contract.

§ 12. Use of brand names. -

4196 4197 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or 4198 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be 4199 deemed to convey the general style, type, character, and quality of the article desired. Any article that 4200 the Institution in its sole discretion determines to be the equal of that specified, considering quality, 4201 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

4202 § 13. Comments concerning specifications. -

4203 The Institution shall establish procedures whereby comments concerning specifications or other 4204 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the 4205 time set for receipt of bids or proposals or award of the contract.

4206 § 14. Prequalification generally; prequalification for construction. -

4207 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. 4208 Any 4209 prequalification procedure shall be established in writing and sufficiently in advance of its 4210 implementation to allow potential contractors a fair opportunity to complete the process.

4211 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant 4212 to a prequalification process for construction projects adopted by the Institution. The process shall be 4213 consistent with the provisions of this section.

4214 The application form used in such process shall set forth the criteria upon which the qualifications of 4215 prospective contractors will be evaluated. The application form shall request of prospective contractors 4216 only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to 4217 request, by checking the appropriate box, that all information voluntarily submitted by the contractor 4218 4219 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the 4220 provisions of subsection D of § 34 of these Rules.

4221 In all instances in which the Institution requires prequalification of potential contractors for 4222 construction projects, advance notice shall be given of the deadline for the submission of 4223 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set 4224 for the submission of bids for such construction so as to allow the procedures set forth in this subsection 4225 to be accomplished.

4226 At least 30 days prior to the date established for submission of bids or proposals under the 4227 procurement of the contract for which the prequalification applies, the Institution shall advise in writing 4228 each contractor who submitted an application whether that contractor has been prequalified. In the event 4229 that a contractor is denied prequalification, the written notification to the contractor shall state the 4230 reasons for the denial of prequalification and the factual basis of such reasons.

4231 A decision by the Institution denying prequalification under the provisions of this subsection shall be 4232 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

4233 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the 4234 following:

4235 1. The contractor does not have sufficient financial ability to perform the contract that would result 4236 from such procurement. If a bond is required to ensure performance of a contract, evidence that the 4237 contractor can acquire a surety bond from a corporation included on the United States Treasury list of 4238 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to 4239 establish the financial ability of the contractor to perform the contract resulting from such procurement;

4240 2. The contractor does not have appropriate experience to perform the construction project in 4241 question;

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4242 3. The contractor or any officer, director or owner thereof has had judgments entered against him 4243 within the past 10 years for the breach of contracts for governmental or nongovernmental construction, 4244 including, but not limited to, design-build or construction management;

4245 The contractor has been in substantial noncompliance with the terms and conditions of prior 4. 4246 construction contracts with the Institution without good cause. If the Institution has not contracted with a 4247 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor 4248 has been in substantial noncompliance with the terms and conditions of comparable construction 4249 contracts with another public body without good cause. The Institution may not utilize this provision to 4250 deny prequalification unless the facts underlying such substantial noncompliance were documented in 4251 writing in the prior construction project file and such information relating thereto given to the contractor 4252 at that time, with the opportunity to respond;

4253 The contractor or any officer, director, owner, project manager, procurement manager or chief 5. 4254 financial official thereof has been convicted within the past 10 years of a crime related to governmental 4255 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 4256 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental 4257 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 4258 substantially similar law of the United States or another state;

4259 The contractor or any officer, director or owner thereof is currently debarred pursuant to an 6. 4260 established debarment procedure from bidding or contracting by any public body, agency of another 4261 state or agency of the federal government; and

4262 7. The contractor failed to provide to the Institution in a timely manner any information requested 4263 by the Institution relevant to subdivisions 1 through 6 of this subsection. 4264

§ 15. Negotiation with lowest responsible bidder. -

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as 4265 4266 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the 4267 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. 4268

However, the negotiation may be undertaken only under conditions and procedures described in writing 4269 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein. 4270

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

4271 An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or 4272 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 4273 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 4274 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 4275 particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. -

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance 4278 4279 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be 4280 excluded from presenting an insurance bid proposal to the Institution in response to a request for 4281 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a 4282 prospective insurer pursuant to § 18. 4283

§ 18. Debarment. -

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4284 Prospective contractors may be debarred from contracting for particular types of supplies, services, 4285 insurance or construction, for specified periods of time. Any debarment procedure shall be established in 4286 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a 4287 contractor's unsatisfactory performance for the Institution. 4288

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

4289 A. The Institution may implement a purchase program for recycled goods and may coordinate its 4290 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 4291 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

4292 The Department of Environmental Quality, with advice from the Virginia Recycling Markets B. 4293 Development Council, shall advise the Institution concerning the designation of recycled goods.

4294 § 20. Preference for Virginia products with recycled content and for Virginia firms. -

4295 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or 4296 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 4297 decided by lot.

4298 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 4299 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 4300 lowest responsive and responsible bidder who is a resident of Virginia.

4301 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where 4302 goods are being offered, and existing price preferences have already been taken into account, preference 4303 shall be given to the bidder whose goods contain the greatest amount of recycled content.

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4304 § 21. Preference for Virginia coal used in the Institution. -

4305 In determining the award of any contract for coal to be purchased for use in the Institution with state 4306 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest 4307 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more 4308 than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined 4309 elsewhere.

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

4311 A. In determining the award of any contract for paper and paper products to be purchased for use 4312 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable 4313 for the purpose intended, so long as the price is not more than 10% greater than the price of the low 4314 responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

4315 B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247. 4316 4317

§ 23. Withdrawal of bid due to error. -

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4318 A. A bidder for a public construction contract, other than a contract for construction or maintenance 4319 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 4320 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 4321 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 4322 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made 4323 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can 4324 be clearly shown by objective evidence drawn from inspection of original work papers, documents and 4325 materials used in the preparation of the bid sought to be withdrawn.

4326 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the 4327 4328 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 4329 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 4330 objective evidence drawn from inspection of original work papers, documents and materials used in the 4331 preparation of the bid sought to be withdrawn.

4332 One of the following procedures for withdrawal of a bid shall be selected by the Institution and 4333 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 4334 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 4335 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or 4336 designated official his original work papers, documents and materials used in the preparation of the bid 4337 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 4338 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 4339 instance, the work papers, documents and materials may be considered as trade secrets or proprietary 4340 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 4341 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 4342 shall have two hours after the opening of bids within which to claim in writing any mistake as defined 4343 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 4344 period has elapsed. The mistake shall be proved only from the original work papers, documents and 4345 materials delivered as required herein.

4346 B. The Institution may establish procedures for the withdrawal of bids for other than construction 4347 contracts.

4348 C. No bid shall be withdrawn under this section when the result would be the awarding of the 4349 contract on another bid of the same bidder or of another bidder in which the ownership of the 4350 withdrawing bidder is more than 5%.

4351 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed 4352 to be the low bid.

4353 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or 4354 labor to or perform any subcontract or other work agreement for the person or firm to whom the 4355 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for 4356 which the withdrawn bid was submitted.

4357 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 4358 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid 4359 price, provided such bidder is a responsible and responsive bidder.

§ 24. Contract Pricing Arrangements. -

4361 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 4362 basis that is not prohibited by these Rules.

4363 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost. 4364

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4365 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis 4366 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole 4367 or part as a percentage of such claims, shall not be prohibited by this section. 4368

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

4369 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has 4370 obtained, and continues to maintain for the duration of the work, workers' compensation coverage 4371 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 4372 4373 evidence of such coverage.

B. The Department of General Services shall provide the form to the Institution. Failure of the 4374 4375 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 4376 of subsection A.

4377 C. No subcontractor shall perform any work on a construction project of the Institution unless he 4378 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage 4379 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 4380 Virginia. 4381

§ 26. Retainage on construction contracts. -

4382 A. In any contract issued by the Institution for construction that provides for progress payments in 4383 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% 4384 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful 4385 performance of the contract. All amounts withheld may be included in the final payment.

4386 B. Any subcontract for a public project that provides for similar progress payments shall be subject 4387 to the provisions of this section. 4388

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

4390 A. Any provision contained in any public construction contract of the Institution that purports to 4391 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable 4392 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the 4393 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to 4394 causes within their control shall be void and unenforceable as against public policy.

4395 Subsection A shall not be construed to render void any provision of a public construction Β. 4396 contract awarded by the Institution that:

4397 Allows the recovery of that portion of delay costs caused by the acts or omissions of the 1. 4398 contractor, or its subcontractors, agents or employees; 4399

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

3. Provides for liquidated damages for delay; or

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

4402 C. A contractor making a claim against the Institution for costs or damages due to the alleged 4403 delaying of the contractor in the performance of its work under any public construction contract of the 4404 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the 4405 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage 4406 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation 4407 or arbitration to be false or to have no basis in law or in fact.

4408 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 4409 the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to 4410 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 4411 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 4412 4413 determined through litigation or arbitration to have been made in bad faith.

§ 28. Bid bonds. -

4415 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 4416 million shall be accompanied by a bid bond from a surety company selected by the bidder that is 4417 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will 4418 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 4419 5% of the amount bid.

4420 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for 4421 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

4422 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 4423 or proposals for construction contracts anticipated to be less than \$1 million. 4424

§ 29. Performance and payment bonds. -

4425 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million 4426 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to

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4427 any prime contractor requiring the performance of labor or the furnishing of materials for buildings, 4428 structures or other improvements to real property owned by the Institution, the contractor shall furnish to 4429 the Institution the following bonds:

4430 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 4431 conditioned upon the faithful performance of the contract in strict conformity with the plans, 4432 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a 4433 form and amount satisfactory to the Institution.

4434 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of 4435 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom 4436 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the 4437 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied 4438 or performed in the furtherance of the work.

4439 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but 4440 only for periods when the equipment rented is actually used at the site.

4441 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 4442 that are authorized to do business in Virginia. 4443

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

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

4445 E. Nothing in this section shall preclude the Institution from requiring payment or performance 4446 bonds for construction contracts below \$1 million.

4447 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish 4448 a payment bond with surety thereon in the sum of the full amount of the contract with such 4449 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are 4450 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the 4451 work provided for in the subcontract. 4452

§ 30. Alternative forms of security. -

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4453 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 4454 escrow in the face amount required for the bond.

4455 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the 4456 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 4457 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 4458 be granted only upon a determination that the alternative form of security proffered affords protection to 4459 the Institution equivalent to a corporate surety's bond.

4460 § 31. Bonds on other than construction contracts. -

4461 The Institution may require bid, payment, or performance bonds for contracts for goods or services if 4462 provided in the Invitation to Bid or Request for Proposal.

4463 § 32. Action on performance bond. -

No action against the surety on a performance bond shall be brought by the Institution unless 4464 4465 brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action. 4466 4467

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

4468 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 4469 material in accordance with the contract documents in furtherance of the work provided in any contract 4470 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 4471 days after the day on which the claimant performed the last of the labor or furnished the last of the 4472 materials for which he claims payment, may bring an action on the payment bond to recover any 4473 amount due him for the labor or material. The obligee named in the bond need not be named a party to 4474 the action.

4475 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 4476 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's 4477 payment bond only if he has given written notice to the contractor within 180 days from the day on 4478 which the claimant performed the last of the labor or furnished the last of the materials for which he 4479 claims payment, stating with substantial accuracy the amount claimed and the name of the person for 4480 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be 4481 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at 4482 any place where his office is regularly maintained for the transaction of business. Claims for sums 4483 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the 4484 time limitations stated in this subsection.

4485 C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials. 4486

4487 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 4515

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4488 it is in writing, signed by the person whose right is waived, and executed after such person has 4489 performed labor or furnished material in accordance with the contract documents.

4490 § 34. Public inspection of certain records. -

4491 A. Except as provided in this section, all proceedings, records, contracts and other public records 4492 relating to procurement transactions shall be open to the inspection of any citizen, or any interested 4493 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et 4494 seq.).

4495 Β. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 4496 shall not be open to public inspection.

4497 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 4498 bid records within a reasonable time after the opening of all bids but prior to award, except in the event 4499 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid 4500 records shall be open to public inspection only after award of the contract.

4501 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect 4502 proposal records within a reasonable time after the evaluation and negotiations of proposals are 4503 completed but prior to award, except in the event that the Institution decides not to accept any of the 4504 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection 4505 only after award of the contract.

4506 Any inspection of procurement transaction records under this section shall be subject to E. 4507 reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection 4508 4509 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the 4510 4511 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission 4512 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the 4513 reasons why protection is necessary. 4514

§ 35. Exemption for certain transactions. -

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

1. The selection of services related to the management and investment of the Institution's endowment 4516 4517 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be 4518 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by 4519 § 23-76.1.

4520 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the 4521 Institution. However, such purchase procedures shall provide for competition where practicable.

4522 Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is 4523 4524 obligated to conform to procurement procedures that are established by federal statutes or regulations, 4525 whether or not those federal procedures are in conformance with the provisions of these Rules. 4526

4. The University of Virginia Medical Center.

4527 5. The purchase of goods and services by the Institution when such purchases are made under a 4528 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

4529 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 4530 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 4531 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 4532 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 4533 of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of 4534 4535 these Rules in conflict with the conditions of the grant or contract. 4536

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

4537 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into 4538 contracts with faith-based organizations for the purposes described in this section on the same basis as 4539 any other nongovernmental source without impairing the religious character of such organization, and 4540 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

4541 B. For the purposes of this section, "faith-based organization" means a religious organization that is 4542 or applies to be a contractor to provide goods or services for programs funded by the block grant 4543 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 4544 104-193.

4545 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this 4546 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 4547 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 4548 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of 4549 religious freedom by the recipients of such goods, services, or disbursements.

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4550 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and 4551 purchase orders prominently display a nondiscrimination statement indicating that it does not 4552 discriminate against faith-based organizations.

4553 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any 4554 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on 4555 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 4556 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other 4557 organizations that contract with public bodies to account for the use of the funds provided; however, if 4558 the faith-based organization segregates public funds into separate accounts, only the accounts and 4559 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) 4560 shall be construed to supersede or otherwise override any other applicable state law.

4561 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 4562 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to 4563 4564 expenditures pursuant to contracts, if any, for the services of chaplains.

4565 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization 4566 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of 4567 4568 a particular religion.

4569 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 4570 to a contract between the Institution and a faith-based organization, objects to the religious character of 4571 the faith-based organization from which the individual receives or would receive the goods, services, or 4572 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 4573 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

4574 The Institution shall provide to each individual who applies for or receives goods, services, or 4575 disbursements provided pursuant to a contract between the Institution and a faith-based organization a 4576 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based 4577 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 4578 charitable or religious character, practices, or expression. No provider of services may discriminate 4579 against you on the basis of religion, a religious belief, or your refusal to actively participate in a 4580 religious practice. If you object to a particular provider because of its religious character, you may 4581 request assignment to a different provider. If you believe that your rights have been violated, please 4582 discuss the complaint with your provider or notify the appropriate person as indicated in this form. 4583

§ 37. Exemptions from competition for certain transactions. -

4584 The Institution may enter into contracts without competition, as that term is described in subsections 4585 A through J of § 5 (Methods of procurement) of these Rules, for: 4586

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

4587 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 4588 Blind and Vision Impaired;

4589 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported 4590 employment services serving the handicapped;

- 4591 c. Private educational institutions; or
- 4592 d. Other public educational institutions.
- 4593 2. Speakers and performing artists;
- 4594 3. Memberships and Association dues:
- 4595 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 4596 goods or services by the Institution;
- 4597 5. Group travel in foreign countries;
- 4598 6. Conference facilities and services;

4599 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, 4600 registration and tournament fees: 4601

8. Royalties; or

4602 9. The purchase of legal services, provided that the Office of the Attorney General has been 4603 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

4604 10. Maintenance contract renewals for scientific research equipment and software, provided that the 4605 institution has posted the renewal to eVa and documented that there was only one response or less and 4606 such documentation includes a statement signed by the buyer indicating that no firm other than the 4607 original manufacturer/developer offers the service.

4608 Exemptions from competitive sealed bidding and competitive negotiation for certain § 38. 4609 transactions; limitations. -

4610 The Institution may enter into contracts for insurance or electric utility service without competitive

4611 sealed bidding or competitive negotiation if purchased through an association of which the Institution is

4612 a member if the association was formed and is maintained for the purpose of promoting the interest and 4613 welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the 4614

Institution has made a determination in advance after reasonable notice to the public and set forth in 4615 4616 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the

4617 public. The writing shall document the basis for this determination.

4618 § 39. Definitions. -

As used in §§ 39 through 46, unless the context requires a different meaning: 4619

"Contractor" means the entity that has a direct contract with the Institution. 4620

4621 "Debtor" means any individual, business, or group having a delinguent debt or account with any state 4622 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

4623 "Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after 4624 4625 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution. 4626

4627 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to 4628 whom the contract was awarded or to any subcontractor in the performance of the work provided for in 4629 such contract.

4630 § 40. Exemptions. -

4631 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any 4632 public utility tariffs prescribed by the State Corporation Commission.

4633 § 41. Retainage to remain valid. -

Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall 4634 4635 remain valid.

4636 § 42. Prompt payment of bills by the Institution. -

A. The Institution shall promptly pay for the completely delivered goods or services by the required 4637 4638 payment date.

4639 Payment shall be deemed to have been made when offset proceedings have been instituted, as 4640 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

4641 Separate payment dates may be specified for contracts under which goods or services are 4642 provided in a series of partial deliveries or executions to the extent that such contract provides for 4643 separate payment for such partial delivery or execution. 4644

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

4645 In instances where there is a defect or impropriety in an invoice or in the goods or services received, 4646 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the 4647 4648 invoice or the goods or services. 4649

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

4650 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date 4651 payment is made for purposes of these Rules.

4652 § 45. Payment clauses to be included in contracts. -

4653 Any contract awarded by the Institution shall include:

4654 1. A payment clause that obligates the contractor to take one of the two following actions within 4655 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the 4656 subcontractor under that contract:

Pay the subcontractor for the proportionate share of the total payment received from the 4657 a 4658 Institution attributable to the work performed by the subcontractor under that contract; or

4659 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the 4660 subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers 4661 4662 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 4663 numbers.

4664 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts 4665 owed by the contractor that remain unpaid after seven days following receipt by the contractor of 4666 payment from the Institution for work performed by the subcontractor under that contract, except for 4667 amounts withheld as allowed in subdivision 1.

4668 An interest rate clause stating, "Unless otherwise provided under the terms of this contract, 4. 4669 interest shall accrue at the rate of 1% per month.

4670 Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and 4671 4672 interest requirements with respect to each lower-tier subcontractor.

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4673 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause 4674 in this section shall not be construed to be an obligation of the Institution. A contract modification shall 4675 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement 4676 claim shall not include any amount for reimbursement for the interest charge.

4677 § 46. Interest penalty; exceptions. -

4678 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the 4679 Institution to a vendor that remain unpaid after seven days following the payment date. However, 4680 nothing in this section shall affect any contract providing for a different rate of interest, or for the 4681 payment of interest in a different manner.

4682 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on 4683 corporate loans (prime rate) at large United States money center commercial banks as reported daily in 4684 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 4685 4686 interest established pursuant to § 58.1-1812 of the Code of Virginia.

4687 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 4688 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 4689 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 4690 exception from the interest penalty provided by this subsection shall apply only to that portion of a 4691 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 4692 the disagreement.

4693 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 4694 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 4695 contractor from receiving interest on such funds under an approved escrow agreement.

4696 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or 4697 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 4698 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the 4699 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 4700 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 4701 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days 4702 following the payment date.

§ 47. Ineligibility. -

4703

4704 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from 4705 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 4706 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the 4707 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 4708 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 4709 requested by the bidder within five business days after receipt of the notice.

Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 4710 challenging the evaluation. The Institution shall issue its written determination of disqualification or 4711 4712 ineligibility based on all information in the possession of the Institution, including any rebuttal 4713 information, within five business days of the date the Institution received such rebuttal information.

4714 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 4715 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 4716 evaluation reveals that the bidder should be refused permission to participate, or disqualified from 4717 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The 4718 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 4719 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 4720 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 4721 in § 54.

4722 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 4723 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 4724 restoration of eligibility. 4725

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

4726 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final 4727 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 4728 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 4729 instituting legal action as provided in § 54.

4730 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, 4731 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 4732 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released 4733 only upon a final determination that the bidder was entitled to withdraw the bid.

4734 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 4735 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 4736 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to 4737 Bid, the sole relief shall be withdrawal of the bid.

4738 § 49. Determination of nonresponsibility. -

4739 Following public opening and announcement of bids received on an Invitation to Bid, the 4740 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed 4741 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent 4742 low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution 4743 4744 determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 4745 4746 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 4747 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that 4748 relate to the determination, if so requested by the bidder within five business days after receipt of the 4749 notice.

4750 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 4751 challenging the evaluation. The Institution shall issue its written determination of responsibility based 4752 on all information in the possession of the Institution, including any rebuttal information, within five 4753 business days of the date the Institution received the rebuttal information. At the same time, the 4754 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

4755 3. Such notice shall state the basis for the determination, which shall be final unless the bidder 4756 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 4757 4758 as provided in § 54.

4759 The provisions of this subsection shall not apply to procurements involving the prequalification of 4760 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such 4761 bidders are not responsible.

4762 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the 4763 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in 4764 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the 4765 4766 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or 4767 directed award as provided in subsection A of § 54, or both.

4768 If it is determined that the decision of the Institution was not an honest exercise of discretion, but 4769 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state 4770 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has 4771 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

4772 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract 4773 shall proceed under this section, and may not protest the award or proposed award under the provisions 4774 of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by 4775 4776 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 4777 to be the most advantageous. 4778

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

4779 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 4780 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 4781 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 4782 notice of the award or the announcement of the decision to award shall be given by the Institution in 4783 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 4784 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 4785 protest the award or decision to award such contract shall submit the protest in the same manner no 4786 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 4787 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part 4788 upon information contained in public records pertaining to the procurement transaction that are subject 4789 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 4790 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at 4791 such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest 4792 4793 and the relief sought. The Institution or designated official shall issue a decision in writing within 10 4794 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 4795 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting

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4796 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as 4797 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the 4798 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of 4799 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 4800 standards of § 55 of these Rules.

4801 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the 4802 sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it 4803 to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or 4804 capricious, then the sole relief shall be as hereinafter provided.

4805 Where the award has been made but performance has not begun, the performance of the contract 4806 may be enjoined. Where the award has been made and performance has begun, the Institution may 4807 declare the contract void upon a finding that this action is in the best interest of the public. Where a 4808 contract is declared void, the performing contractor shall be compensated for the cost of performance up 4809 to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

4810 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing 4811 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to 4812 award was based on fraud or corruption or on an act in violation of these Rules, the Institution, 4813 designated official or appeals board may enjoin the award of the contract to a particular bidder. 4814

§ 51. Effect of appeal upon contract. -

4815 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in 4816 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has 4817 been filed.

4818 § 52. Stay of award during protest. -

4819 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event 4820 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided 4821 in § 54, no further action to award the contract shall be taken unless there is a written determination that 4822 proceeding without delay is necessary to protect the public interest or unless the bid or offer would 4823 expire. 4824

§ 53. Contractual disputes. -

4825 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 4826 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be 4827 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing 4828 herein shall preclude a contract from requiring submission of an invoice for final payment within a 4829 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of 4830 claims shall not delay payment of amounts agreed due in the final payment.

4831 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 4832 Such procedure, which may be contained in the contract or may be specifically incorporated into the 4833 contract by reference and made available to the contractor, shall establish a time limit for a final 4834 decision in writing by the Institution. If the Institution has established administrative procedures meeting 4835 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically 4836 incorporated in the contract by reference and made available to the contractor. The Institution may 4837 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 4838 (ADR) as an administrative procedure.

4839 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these 4840 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's 4841 decision on the claim, unless the Institution fails to render such decision within the time specified in the 4842 contract.

4843 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within 4844 six months of the date of the final decision on the claim by the Institution by invoking administrative 4845 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting 4846 legal action as provided in § 54. 4847

§ 54. Legal actions. -

4848 A bidder or offeror, actual or prospective, who is refused permission or disqualified from Α. 4849 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 4850 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that 4851 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest 4852 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of 4853 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in 4854 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in 4855 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously 4856 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a 4857 responsible bidder, the court may direct the Institution to award the contract to such bidder in 4858 accordance with the requirements of this section and the Invitation to Bid.

4859 A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the 4860 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary 4861 4862 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, 4863 or the terms or conditions of the Invitation to Bid.

4864 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole 4865 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or 4866 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the 4867 4868 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but 4869 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state 4870 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

4871 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 4872 of reasonable security to protect the Institution.

4873 A contractor may bring an action involving a contract dispute with the Institution in the E. 4874 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be 4875 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of 4876 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of 4877 Accounts.

4878 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of 4879 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, 4880 the procedures shall be exhausted prior to instituting legal action concerning the same procurement 4881 transaction unless the Institution agrees otherwise.

4882 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a 4883 contractor. 4884

§ 55. Administrative appeals procedure. -

4885 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 4886 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 4887 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 4888 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 4889 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 4890 disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee 4891 of the governmental entity against whom the claim has been filed. The findings of fact shall be final 4892 4893 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) 4894 so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings 4895 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these 4896 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a 4897 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution 4898 Council in establishing an Alternative Dispute Resolution (ADR) procedure.

4899 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 4900 judicial review if such action is brought within 30 days of receipt of the written decision. 4901

§ 56. Alternative dispute resolution. -

4902 The Institution may enter into agreements to submit disputes arising from contracts entered into 4903 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of 4904 4905 Virginia, as applicable. 4906

§ 57. Ethics in public contracting. -

4907 The Institution and its governing body, officers and employees shall be governed by the Ethics in 4908 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of 4909 Chapter 43 of Title 2.2 of the Code of Virginia. **ATTACHMENT 2**

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Memorandum of Agreement

The Commonwealth of Virginia and the University of Virginia

ERP/SciQuest Implementation with eVA

The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the 4915 4916 following:

4917 I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Oracle). 4918

4919 II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to 4920 eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format.

4921 Longer term a more real-time option may be mutually agreed by the Department of General 4922 Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between 4923 the ERP and eVA systems.

4924 III. The University may request that eVA contract vendors provide a version of their contract catalog 4925 for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog 4926 through eVA, then the University will access these catalogs as described in item B8 of the Metrics 4927 In any event, the University shall be responsible for payment of all eVA section of this document. 4928 transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses 4929 to issue to unregistered and registered vendors through eVA.

4930 IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is 4931 understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from 4932 mandatory processing through eVA.

4933 V. In lieu of processing individual orders for requirements through eVA, a more efficient 4934 administrative approach is to establish a blanket or standing order. The University is authorized to use 4935 such an approach where it makes good business sense. The University will ensure vendors understand 4936 that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the 4937 transaction fee will be based on the total order amount, and the vendor is required to pay the total 4938 transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule 4939 specified in the order.

4940 VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting 4941 electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other 4942 orders to vendors. Whereas the University maintains a University specific electronic vendor record that 4943 identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA 4944 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the 4945 eVA Business Plan as follows:

4946 A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the 4947 appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that 4948 includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will 4949 pay the eVA transaction fees for these orders.

4950 For vendors that agree to accept the eVA terms and conditions, the University will transmit the 4951 appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that 4952 includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, 4953 e-mail address and phone number." The University agrees that, for these orders, it will resolve any 4954 vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether 4955 such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or 4956 CGI-AMS. 4957

The University further agrees that:

4958 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 4959 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed 4960 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

4961 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 4962 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

4963 3. In the event the University does not provide resolution notification to the eVA Business Manager 4964 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 4965 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

4966 VII. The University will not require separate vendor registrations as a prerequisite for responding to 4967 University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 4968 4969 information will be supported in eVA in such a way as to provide CoVA verified vendor information to 4970 entities. The University will have the option to receive a subset of vendor related data. Until an 4971 enterprise W-9 process is established, the University will be responsible for collection of W-9 4972 information.

4973 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at 4974 least six (6) months prior to change or as soon as any new plan is proposed) with the University 4975 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that 4976 may affect the technical changes described herein.

4977 IX. Integration of the University's electronic procurement solution with the University's ERP is the 4978 responsibility of the University. The solution must provide for orders, change orders and cancellations. 4979 Guidelines

4980 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for 4981 electronic procurement between the University and the CoVA.

4982 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 4983 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

4984 3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data 4985 Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt 4986 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and 4987 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements 4988 for unregistered vendor orders.

4989 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA 4990 standard format.

4991 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

4992 6. eVA Interface standard does not currently support PCard orders; however these orders may be 4993 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.

4994 Schedule

4995 The University shall implement this agreement no later than December 2006.

4996 Metrics

4997 A. The University shall comply with the following Governor's eVA Management:

4998 Objective

4999 Ninety-fiveEighty percent of all nonexempt orders to be processed by eVA. Includes nonexempt 5000 orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For 5001 5002 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be 5003 5004 reported on the eVA Dashboard and the corresponding non-use fee paid by the University. 5005

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

5006 1. Provide end users, including purchase-card users, access to an electronic system for buying;

5007 2. Conduct business with eVA registered vendors whenever possible;

5008 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically 5009 using eVA;

5010 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar 5011 value, that include commodity codes, complete item descriptions, quantities, and unit prices;

5012 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five 5013 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the 5014 5015 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to 5016 monitor the usage of confirming orders with the objective of reducing their numbers to the extent 5017 possible.

5018 The University agrees that, for confirming orders, it will resolve any vendor dispute, including 5019 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such 5020 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or 5021 CGI-AMS. 5022

The University further agrees that:

5023 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 5024 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed 5025 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

5026 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and 5027

5028 c. In the event the University does not provide resolution notification to the eVA Business Manager 5029 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 5030 reversing disputed transaction fees from the vendor to the University and the University will pay the fee. 5031 6. Timely process electronic change orders and cancellations;

5032 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as 5033 specifically exempted by DPS:

5034 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will be responsible for the 5035 5036 accuracy of contract catalog pricing loaded into the ERP/SciQuest;

5037 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post 5038 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 5039 below);

5040 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate 5041 commodities, when such are identified;

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5042 5043 5044 5045 5046	11. Complete and certify the monthly eVA Dashboard Report; and12. Timely remit any eVA transaction and non-use fees incurred by the institution.C. The University shall be subject to eVA fees assessed per the eVA Business Plan.The University shall assure that payments to CGI-AMS are current.
5047	EXHIBIT R
5048 5049	MANAGEMENT AGREEMENT
5050	BETWEEN
5051 5052	THE COMMONWEALTH OF VIRGINIA
5052 5053	AND THE UNIVERSITY OF VIRGINIA
5054	PURSUANT TO
5055 5056	THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS
5050 5057	ACT OF 2005
5058	
5059 5060	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
5061	
5062	THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
5063 5064	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT I. PREAMBLE.
5065	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
5066 5067	4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject
5067 5068	to the adoption of policies by their governing boards and the approval of management agreements to be
5069	negotiated with the Commonwealth.
5070 5071	The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.
5072	This Policy is intended to cover the authority that may be granted to the University pursuant to
5073	Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
5074 5075	Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers
5076	and authorities granted to the Medical Center by law, to the extent they exceed those granted to the
5077	University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.
5078 5079	II. DEFINITIONS. As used in this policy, the following terms shall have the following meanings, unless the context
5080	requires otherwise:
5081 5082	"Academic Division" means that part of the University known as (State Agency 207). "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
5082 5083	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
5084	"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.
5085 5086	"College" means that part of the University operated as the University of Virginia's College at Wise, also known as (State Agency 246).
5080 5087	"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
5088	the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
5089 5090	entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.
5090 5091	"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of
5092	Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
5093 5094	of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.
5095	"Effective Date" means the effective date of the initial Management Agreement between the
5096	University and the Commonwealth.
5097 5098	"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University and the Commonwealth of Virginia.
5099	"Medical Center" means that part of the University consisting of the University of Virginia Medical
5100 5101	Center, known as (State Agency 209), and related health care and health maintenance facilities.
5101	"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 5102

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5103 general government funds, as defined in the December 20, 2004 Report to the Governor and General 5104 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means the University of Virginia, consisting of the Academic Division, the College, and 5105 5106 the Medical Center.

III. SCOPE OF POLICY. 5107

5108 This Policy applies to the University's responsibility for management, investment and stewardship of 5109 all its financial resources, including but not limited to, general, non-general and private funds. This 5110 responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources. 5111

The University of Virginia's College at Wise shall receive the benefits of this Policy as it is 5112 implemented by the University on behalf of the College at Wise, but the College at Wise shall not 5113 5114 receive any additional independent financial operations and management authority as a result of this 5115 Management Agreement beyond the independent financial operations and management authority that it 5116 had prior to the Effective Date of the University's initial Management Agreement with the 5117 Commonwealth or that it may be granted by law in the future. 5118

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

5119 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 5120 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 5121 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 5122 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 5123 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 5124 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 5125 implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures. 5126

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

5128 The President, acting through the Executive Vice President and Chief Operating Officer, shall 5129 continue to be authorized by the Board to maintain existing and implement new policies governing the 5130 management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting 5131 5132 principles employed by the Commonwealth, including the use of fund accounting principles, with regard 5133 to the establishment of the underlying accounting records of the University and the allocation and 5134 utilization of resources within the accounting system, including the relevant guidance provided by the 5135 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and 5136 proper use of funds from specific types of fund sources, (iii) provide adequate risk management and 5137 internal controls to protect and safeguard all financial resources, including moneys transferred to the 5138 University pursuant to a general fund appropriation, and ensure compliance with the requirements of the 5139 Appropriation Act.

5140 The financial management system shall continue to include a financial reporting system to satisfy 5141 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 5142 as specified in the related State Comptroller's Directives, and the University's separately audited financial 5143 statements. To ensure observance of limitations and restrictions placed on the use of the resources 5144 available to the University, the accounting and bookkeeping system of the University shall continue to 5145 be maintained in accordance with the principles prescribed for governmental organizations by the 5146 Governmental Accounting Standards Board.

5147 In addition, the financial management system shall continue to provide financial reporting for the 5148 President, acting through the Executive Vice President and Chief Operating Officer, and the Board of 5149 Visitors to enable them to provide adequate oversight of the financial operations of the University.

Upon the Effective Date of the initial Management Agreement between the University and the 5150 5151 Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in 5152 Section VII below, the University shall not be required to record its financial transactions in the 5153 Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing 5154 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems 5155 that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The 5156 University's financial reporting system shall provide (i) summary monthly reports for State agencies 5157 including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the 5158 Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the 5159 Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the 5160 Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the 5161 5162 Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such 5163 other special reports as may be requested from time to time.

5164 VI. FINANCIAL MANAGEMENT POLICIES.

5165 The President, acting through the Executive Vice President and Chief Operating Officer, shall create 5166 and implement any and all financial management policies necessary to establish a financial management 5167 system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the 5168 5169 underlying accounting principles and policies employed by the Commonwealth and the University, but 5170 rather will focus on the internal operations of the University's financial management. These policies shall 5171 include, but need not be limited to, the development of a tailored set of finance and accounting practices 5172 that seek to support the University's specific business and administrative operating environment in order 5173 to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained 5174 5175 in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management 5176 and internal accounting controls to ensure University financial resources are properly safeguarded and 5177 that appropriate stewardship of public funds is obtained through management's oversight of the effective 5178 and efficient use of such funds in the performance of University programs.

5179 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the
5180 University shall continue to follow the Commonwealth's accounting policies until such time as specific
5181 alternate policies can be developed, approved and implemented. Such alternate policies shall include
5182 applicable accountability measures and shall be submitted to the State Comptroller for review and
5183 comment before they are implemented by the University.

5184 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

5185 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the
5186 University shall have the power and authority to manage all monies received by it. All State general
5187 funds to be allocated to the University shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 5188 5189 5190 Assembly the degree to which each public institution of higher education of the Commonwealth has met 5191 the financial and administrative management and educational-related performance benchmarks called for 5192 by that subsection and approved as part of the Appropriation Act then in effect for the State goals and 5193 objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 5194 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year 5195 for which the financial and administrative management and educational-related performance benchmarks 5196 described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal 5197 years thereafter, each public institution of higher education of the Commonwealth that (i) has been 5198 certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and 5199 (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain financial 5200 incentives, including interest on the tuition and fees and other non-general fund Educational and General 5201 Revenues deposited into the State Treasury by the public institution of higher education.

5202 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for 5203 which it has received such certification from SCHEV, the University is authorized to hold and invest 5204 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise 5205 funds, and all other non-general fund revenues subject to the following requirements:

5206 i) The University shall deposit such funds in the State Treasury pursuant to the State process in 5207 place at the time of such deposit.

5208 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section5209 IX below.

iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall 5210 5211 hold in escrow all interest earned on the University's tuition and fees and other non-general fund 5212 Educational and General Revenues. Interest earned on the escrow account shall be deposited to the 5213 account. Upon receipt of the required State Council of Higher Education for Virginia certification that 5214 the University has met such institutional performance benchmarks and the conditions prescribed in 5215 subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund 5216 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the 5217 amount deposited in the escrow account as the financial incentive provided in subdivision 1 of 5218 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If 5219 public institutions of higher education of the Commonwealth are permitted, or the University in 5220 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 5221 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall 5222 not apply to such interest on such funds, and such interest shall not be held in escrow.

5223 iv) If in any given year the University does not receive the certification from the State Council of
5224 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
5225 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall

transfer to the general fund the balance in the escrow account as of June 30 of that year. 5226

5227 v) Beginning on the effective date of its initial Management Agreement with the University until the 5228 beginning of the first fiscal year following the fiscal year for which it has received the required 5229 certification from SCHEV, the University shall continue to deposit tuition and all other non-general 5230 funds with the State Treasurer by the same process that it would have been required to use if it had not 5231 entered into a Management Agreement with the Commonwealth.

5232 On the first business day of the first fiscal year following the fiscal year for which it has vi) 5233 received the required certification from SCHEV, the University may draw down all cash balances held 5234 by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored 5235 programs, auxiliary enterprises, and all other non-general fund revenues.

5236 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay 5237 these funds to the University as specified in Section IX below.

5238 The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 5239 5240 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 5241 5242 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be 5243 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 5244 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the 5245 Department of Planning and Budget by July 31 of the subsequent fiscal year.

5246 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 5247 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 5248 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue 5249 5250 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, 5251 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the 5252 University that the University shall be entitled to retain non-general fund savings generated from 5253 changes in Commonwealth rates and charges, including but not limited to health, life, and disability 5254 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than 5255 reverting such savings back to the Commonwealth. This financial resource policy assists the University 5256 by providing the framework for retaining and managing non-general funds, for the receipt of general 5257 funds, and for the use and stewardship of all these funds.

5258 The President, acting through the Executive Vice President and Chief Operating Officer, shall 5259 continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the University shall periodically 5260 5261 audit the University's cash management system in accordance with appropriate risk assessment models 5262 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional 5263 oversight shall continue to be provided through the annual audit and assessment of internal controls 5264 performed by the Auditor of Public Accounts.

5265 For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently 5266 5267 exists and from time to time may be amended. 5268

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

5269 The President, through the Executive Vice President and Chief Operating Officer, shall continue to 5270 be authorized to create and implement any and all Accounts Receivable Management and Collection 5271 policies as part of a system for the management of University financial resources. The policies shall be 5272 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the 5273 Code of Virginia, such that the University shall take all appropriate and cost effective actions to 5274 aggressively collect accounts receivable in a timely manner.

5275 These shall include, but not be limited to, establishing the criteria for granting credit to University 5276 customers; establishing the nature and timing of collection procedures within the above general 5277 principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 5278 5279 collection activities for all University accounts receivable such as reporting delinquent accounts to credit 5280 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 5281 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's 5282 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the 5283 State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established 5284 pursuant to the Virginia Debt Collection Act. 5285

5286 IX. DISBURSEMENT MANAGEMENT.

5287 The President, acting through the Executive Vice President and Chief Operating Officer, shall

5288 continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall 5289 5290 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the 5291 execution of the University's operations. These policies also shall continue to address the timing of 5292 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the 5293 appropriateness of certain goods or services relative to the University's mission, including travel-related 5294 Further, the University's disbursement policy shall continue to provide for the disbursements. 5295 mechanisms by which payments are made including the use of charge cards, warrants, and electronic 5296 payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic 5297 5298 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the 5299 Commonwealth's Debt Set-Off Collection Programs.

5300 Beginning with the fiscal year after the first fiscal year for which it first receives the required 5301 certification from SCHEV, the University may draw down its general fund appropriations (subject to 5302 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.

5303 Such funds shall be available to the University for disbursement as provided in the then-current rules of 5304 the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in 5305 accordance with the following schedule:

5306 i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation 5307 for Educational and General programs on *or about* the first and fifteenth days of each month with 5308 adjustments as needed to meet short-term cash requirements associated with the Commonwealth's 5309 bimonthly pay dates, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after 5310 5311 February 1 of each year in order to meet student obligations;

5312 ii) The University may draw down the sum of all tuition and E&G fees and all other non-general 5313 revenues deposited to the State Treasury each day on the same business day they were deposited; and

5314 iii) The University anticipates that expenditures could exceed available revenues from time to time 5315 during the year if the above disbursement schedule is used. When the University projects a cash deficit 5316 is likely in activities supported by general fund appropriations, the University may make a request to the 5317 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in 5318 a form and within a timeframe agreeable to the parties, in order to cover expenditures.

5319 These disbursement policies shall authorize the President, acting through the Executive Vice 5320 President and Chief Operating Officer, to independently select, engage, and contract for such consultants, 5321 accountants, and financial experts, and other such providers of expert advice and consultation, and, after 5322 consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable 5323 in his or her discretion. The policies also shall continue to include the ability to locally manage and 5324 administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject 5325 to any restrictions contained in the Commonwealth's contracts governing those programs, provided that 5326 the University shall submit the credit card and cost recovery aspects of its financial and operations 5327 policies to the State Comptroller for review and comment prior to implementing those aspects of those 5328 policies. The disbursement policies shall ensure that adequate risk management and internal control 5329 procedures shall be maintained over previously decentralized processes for public records, payroll, and 5330 non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment 5331 reports to the Department of Accounts in accordance with the reporting procedures established pursuant 5332 to the Prompt Payment Act.

5333 The University's disbursement policies shall be guided by the principles of the Commonwealth's 5334 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the 5335 Effective Date of its initial Management Agreement with the Commonwealth, the University shall 5336 continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the 5337 5338 State Comptroller for review and comment prior to their implementation by the University. 5339

X. DEBT MANAGEMENT.

5340 The President, acting through the Executive Vice President and Chief Operating Officer, shall 5341 continue to be authorized to create and implement any and all debt management policies as part of a 5342 system for the management of University financial resources.

Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes, 5343 5344 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury 5345 Board, and that are consistent with debt capacity and management policies and guidelines established by 5346 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, 5347 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided 5348

5349 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 5350 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 5351 5352 comment prior to its adoption by the University.

5353 The University recognizes that there are numerous types of financing structures and funding sources 5354 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 5355 the President, acting through the Executive Vice President and Chief Operating Officer, within the 5356 context of the overall portfolio to ensure that any financial product or structure is consistent with the 5357 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a 5358 full understanding of the transaction, including (i) the identification of potential risks and benefits, and 5359 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or 5360 5361 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be 5362 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

5363 The University currently has established guidelines relating to the total permissible amount of 5364 outstanding debt by monitoring University-wide ratios that measure debt compared to University 5365 balance-sheet resources and annual debt service burden. These measures are monitored and reviewed The 5366 regularly in light of the University's current strategic initiatives and expected debt requirements. 5367 Board of Visitors shall periodically review and approve the University's debt capacity and debt 5368 management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of 5369 Virginia for review and comment prior to their adoption by the University. 5370

XI. INVESTMENT POLICY.

5371 It is the policy of the University to invest its operating and reserve funds solely in the interest of the 5372 University and in a manner that will provide the highest investment return with the maximum security 5373 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act 5374 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence 5375 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and 5376 familiar with such matters would use in the conduct of an enterprise of a like character and with like 5377 aims.

5378 Endowment investments shall be invested and managed in accordance with the Uniform Management 5379 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

5380 The Board of Visitors shall periodically review and approve the investment guidelines governing the 5381 University's operating and reserve funds. 5382

XII. INSURANCE AND RISK MANAGEMENT.

5383 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any 5384 intent during the next biennium to withdraw from any insurance or risk management program made 5385 available to the University through the Commonwealth's Division of Risk Management and in which the 5386 University is then participating, to enable the Commonwealth to complete an adverse selection analysis 5387 of any such decision and to determine the additional costs to the Commonwealth that would result from 5388 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from the insurance or risk management program, the University shall reimburse 5389 5390 the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the 5391 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University 5392 and the Commonwealth.

5393 5. That the provisions of the first, second, and third enactments of this Act shall expire at midnight 5394 on June 30, 20102012, provided that on or before November 15, 2011, the Governor provides to the 5395 Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written 5396 notification that this Management Agreement needs to be renegotiated or revised. If such notification is 5397 not received, this Management Agreement shall continue in effect until June 30, 2015. The expiration of 5398 such enactments shall automatically result in the expiration of the provisions of any management 5399 agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, which was 5400 5401 entered into prior to January 1, 2006, and incorporated into this Act.

5402 2. That § 4.3 and Exhibit A, Attachment 1 and Attachment 2 of Exhibit D, and Exhibit F of the 5403 first enactment of Chapter 943 of the Acts of Assembly of 2006; § 4.3 and Exhibit G, Attachment 5404 1 of Exhibit J, and Exhibit L of the second enactment of Chapter 943 of the Acts of Assembly of 5405 2006; § 4.3 and Exhibit M, Attachment 1 and Attachment 2 of Exhibit P, and Exhibit R of the third enactment of Chapter 943 of the Acts of Assembly of 2006; and the fifth enactment of 5406 Chapter 943 of the Acts of Assembly of 2006 are amended and reenacted as follows: 5407

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 5408 5409 30, 20102012, provided that on or before November 15, 2011, the Governor provides to the Chairmen 5410 of the House Committee on Appropriations and the Senate Committee on Finance written notification

5411	that this Management Agreement needs to be renegotiated or revised. If such notification is not
5412 5413	received, this Management Agreement shall continue in effect until June 30, 2015. EXHIBIT A
5414	
5415 5416	MANAGEMENT AGREEMENT BETWEEN
5410 5417	THE COMMONWEALTH OF VIRGINIA
5418	AND
5419 5420	VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
5420 5421	PURSUANT TO
5422	THE RESTRUCTURED HIGHER EDUCATION
5423 5424	FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005
5424 5425	ACT OF 2003
5426	POLICY GOVERNING
5427 5428	CAPITAL PROJECTS
5428 5429	THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
5430	AND STATE UNIVERSITY
5431 5432	POLICY GOVERNING CAPITAL PROJECTS I. PREAMBLE.
5432 5433	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
5434	4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the
5435 5436	University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace
5430 5437	the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of
5438	central State agencies, and also the traditional preauthorization approval process for projects funded
5439 5440	entirely with non-general funds and without any proceeds from State Tax Supported Debt. The
5440 5441	University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the
5442	Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition
5443 5444	of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services,
5444 5445	Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general
5446	fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to
5447 5448	encompass and implement the authority that may be granted to the University pursuant to Subchapter 3
5440 5449	of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the
5450	University's Enabling Legislation, are not affected by this Policy.
5451 5452	II. DEFINITIONS.
5452 5453	As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:
5454	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
5455 5456	Chapter 4.10 of Title 23 of the Code of Virginia. "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
5450 5457	State University.
5458	"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting
5459 5460	Principles pursuant to the pronouncement of the Financial Accounting Standards Board. "Capital Professional Services" means professional engineering, architecture, land surveying and
5461	landscape architecture services related to capital projects.
5462	"Capital project(s)" means the acquisition of any interest in land, including improvements on the
5463 5464	acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.
5404 5465	"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
5466	public institution of higher education of the Commonwealth of Virginia that has entered into a
5467 5468	management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.
3400	

5469 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
5470 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
5471 of the individual public institutions of higher education of the Commonwealth.

5472 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on 5473 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing 5474 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

5475 "State Tax Supported Debt" means bonds, notes, or other obligations issued under Article X, Section 5476 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 5477 general government funds, as defined in the December 20, 2004 Report to the Governor and General 5478 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

5479 "University" means Virginia Polytechnic Institute and State University, consisting of the University 5480 Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229). 5481 5482

III. SCOPE OF POLICY.

5483 This Policy applies to the planning and budget development for capital projects, capital project 5484 authorization, and the implementation of capital projects, whether funded by a general fund 5485 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other 5486 sources.

5487 This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional 5488 Services and construction services, 4) design reviews and code approvals for capital projects, 5) 5489 5490 environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) 5491 building and land dispositions, 9) project management systems, and 10) reporting requirements. 5492

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

5493 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 5494 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 5495 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 5496 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 5497 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 5498 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 5499 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 5500 and procedures.

V. CAPITAL PROGRAM.

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5502 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a 5503 system for developing one or more capital project programs that defines or define the capital needs of 5504 the University for a given period of time consistent with the University's published Master Plan. This 5505 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of 5506 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be 5507 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from 5508 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board 5509 may approve amendments to the program for Major Capital Projects annually or more often if 5510 circumstances warrant. It shall be University policy that each capital project program shall meet the 5511 University's mission and institutional objectives, and be appropriately authorized by the University. 5512 Moreover, it shall be University policy that each capital project shall be of a size and scope to provide 5513 for the defined program needs, designed in accordance with all applicable building codes and 5514 handicapped accessibility standards as well as the University's design guidelines and standards, and 5515 costed to reflect current costs and escalated to the mid-point of anticipated construction. 5516

VI. AUTHORIZATION OF CAPITAL PROJECTS.

5517 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its 5518 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief 5519 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other 5520 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund 5521 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 5522 Board of Visitors approval and those preappropriation approvals of the State's governmental agencies 5523 then applicable, and shall follow the State's process for capital budget requests.

5524 It shall be the policy of the University that the implementation of capital projects shall be carried out 5525 so that the capital project as completed is the capital project approved by the Board for Major Capital 5526 Projects and according to the procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, for all other capital projects. The President, acting through the 5527 5528 Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement. 5529 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the 5530 plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they 5531 5532 are determined by the President, acting through the Executive Vice President and Chief Operating 5533 Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at

5534 any time but must include a statement of urgency if not part of the approved Major Capital Project 5535 program.

5536 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 5537 SERVICES.

5538 It shall be the policy of the University that procurements shall result in the purchase of high quality 5539 services and construction at reasonable prices and shall be consistent with the Policy Governing the 5540 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 5541 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and 5542 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed 5543 to:

5544 A. Seeking competition to the maximum practical degree, taking into account the size of the 5545 anticipated procurement, the term of the resulting contract and the likely extent of competition;

5546 B. Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the 5547 appearance of any impropriety prohibited by State law or University policy; 5548

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

5549 D. Providing access to the University's business to all qualified vendors, firms and contractors, with 5550 no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to 5551 engage in cooperative procurements and to meet special needs of the University;

5552 E. Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against 5553 employees or applicants because of race, religion, color, sex, national origin, age, disability or other 5554 basis prohibited by State law except where there is a bona fide occupational qualification reasonably 5555 necessary to the contractor's normal operations; and

5556 F. Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small 5557 5558 businesses and to promote and encourage a diversity of suppliers.

The President, acting through the Executive Vice President and Chief Operating Officer, is authorized 5559 5560 to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for: 5561

5562 A. A system of competitive negotiation for Capital Professional Services, including a procedure for 5563 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of 5564 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act; 5565 5566

B. A pregualification procedure for contractors or products;

5567 C. A procedure for special construction contracting methods, including but not limited to 5568 design-build and construction management contracts; and

5569 D. A prompt payment procedure.

5570 The University also may enter into cooperative arrangements with other private or public health or 5571 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, 5572 in the judgment of the University, the purposes of this Policy will be furthered. 5573

VIII. DESIGN REVIEWS AND CODE APPROVALS.

5574 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final 5575 Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be 5576 5577 required. For all capital projects other than Major Capital Projects, the President, acting through the 5578 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and 5579 project authorization based on the size, scope and cost estimate provided with the design. It shall be the 5580 University's policy that all capital projects shall be designed and constructed in accordance with 5581 applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable 5582 accessibility code.

5583 The President, acting through the Executive Vice President and Chief Operating Officer, shall 5584 designate a Building Official responsible for building code compliance by either (i) hiring an individual 5585 to be the University Building Official, or (ii) continuing to use the services of the Department of 5586 General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time 5587 5588 employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building 5589 5590 Official shall issue building permits for each capital project required by the VUSBC to have a building 5591 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building 5592 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this 5593 individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee as required. 5594

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5595 When serving as the University Building Official, such individual shall organizationally report directly 5596 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit of licensed professional architects 5597 5598 or engineers supported by resources and staff who are certified by the Department of Housing and 5599 Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose and 5600 who shall review plans, specifications and documents for compliance with building codes and standards 5601 and perform required inspections of work in progress and the completed capital project. No individual 5602 licensed professional architect or engineer hired under the University's personnel system as a member of 5603 the review unit or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management 5604 functions for the University on the same capital project. 5605

IX. ENVIRONMENTAL IMPACT REPORTS.

5607 It shall be the policy of the University to assess the environmental, historic preservation, and 5608 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts 5609 to the extent practicable. The University shall develop a procedure for the preparation and approval of 5610 environmental impact reports for capital projects, in accordance with State environmental, historic 5611 preservation, and conservation requirements generally applicable to capital projects otherwise meeting 5612 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of 5613 \$300,000 or more. 5614

X. BUILDING DEMOLITIONS.

5615 It shall be the policy of the University to consider the environmental and historical aspects of any 5616 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review 5617 5618 5619 Board in accordance with State historic preservation requirements generally applicable to capital projects 5620 in the Commonwealth. Further, for any property that was acquired or constructed with funding from a 5621 general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, 5622 general laws applicable to State owned property shall apply. 5623

XI. BUILDING OR LAND ACOUISITIONS.

It is the policy of the University that capital projects involving building or land acquisition shall be 5624 5625 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure 5626 that the project management system implemented pursuant to Section XIII below provides for a review 5627 5628 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be 5629 5630 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to 5631 the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is 5632 5633 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating 5634 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies 5635 pertaining to the acquisition of buildings or land for capital projects are carried out. 5636

A. Environmental and Land Use Considerations.

5637 It is the policy of the University to reasonably cooperate with each locality affected by the 5638 acquisition. Such cooperation shall include but not be limited to furnishing any information that the 5639 locality may reasonably request and reviewing any requests by the locality with regard to any such 5640 acquisition. The University shall consider the zoning and comprehensive plan designation by the locality 5641 of the building or land and surrounding parcels, as well as any designation by State or federal agencies 5642 of historically or archeologically significant areas on the land. Nothing herein shall be construed as 5643 requiring the University to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

5645 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure 5646 that, in the case of capital projects involving the acquisition of buildings or land, the project 5647 management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended 5648 5649 purpose without extraordinary cost; that an environmental engineer has been engaged by the University 5650 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services 5651 5652 to the land are adequate or can reasonably be provided or have been provided in the case of building 5653 acquisitions; and that the condition and grade of the soils have been examined to determine if any 5654 conditions exist that would require extraordinary site work or foundation systems.

5655 C. Title and Survey.

5656 A survey shall be prepared for any real property acquired, and an examination of title to the real

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5657 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title 5658 insurance shall be procured from a title insurance company authorized to do business in the 5659 Commonwealth. Based upon the survey and title examination or report, the President, acting through the 5660 Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real 5661 property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, 5662 encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse 5663 effect upon the University's ability to own, occupy, convey or develop the real property.

5664 D. Appraisal.

5665 An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.

5667 XII. BUILDING OR LAND DISPOSITIONS.

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

5673 XIII. PROJECT MANAGEMENT SYSTEMS.

5674 The President, acting through the Executive Vice President and Chief Operating Officer, shall
5675 implement one or more systems for the management of capital projects for the University. The systems
5676 a grant of authority to such officials to engage in further delegation of authority as the President, acting
5678 through the Executive Vice President and Chief Operating Officer, deems appropriate.

5679 The project management systems for capital projects shall be designed to ensure that such projects
5680 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely
5681 related subjects such as selection of architects or policies applicable to University buildings and grounds.
5682 The project management systems may include one or more reporting systems applicable to capital
5683 projects whereby University officials responsible for the management of such projects provide
5684 appropriate and timely reports to the President, acting through the Executive Vice President and Chief
5685 Operating Officer, on the status of such projects during construction.

XIV. REPORTING REQUIREMENTS.

5687 In addition to complying with any internal reporting systems contained in the University's project 5688 management systems, as described in Section XIII above, the University shall comply with State 5689 reporting requirements for those Major Capital Projects funded entirely or in part by a general fund 5690 appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project 5691 constructs improvements on land, or renovates property, that originally was acquired or constructed in 5692 whole or in part with a general fund appropriation for that purpose or proceeds from State Tax 5693 Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is 5694 reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, 5695 5696 5697 the President, acting through the Executive Vice President and Chief Operating Officer, shall report to 5698 the Department of General Services on the status of such capital projects at the initiation of the project, 5699 prior to the commencement of construction, and at the time of acceptance of any such capital project. 5700 ATTACHMENT 1

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

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

Governed by Subchapter 3 of the

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

5706 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia
5707 In accordance with the provisions of the Restructured Higher Education Financial and Administrative
5708 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in
5709 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the
5710 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth
5711 pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods,
5712 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and
5713 construction by the Institution, excluding the University of Virginia Medical Center:

5714 § 1. Purpose. -

5715 The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, 5716 services, insurance, and construction by the Institution from nongovernmental sources, to include 5717 governmental procurement that may or may not result in monetary consideration for either party. These 5728

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5718 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the 5719 Institution, the contractor, or some third party is providing the consideration.

5720 § 2. Scope of Procurement Authority. -

5721 Subject to these Rules, and the Institution's continued substantial compliance with the terms and 5722 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the 5723 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and 5724 exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related 5725 5726 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring 5727 Act.

§ 3. Competition is the Priority. -

5729 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all 5730 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any 5731 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's 5732 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body 5733 of the Institution that competition be sought to the maximum feasible degree, that procurement 5734 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad 5735 flexibility in fashioning details of such competition, that the rules governing contract awards be made 5736 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing 5737 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely 5738 exchange information concerning what is sought to be procured and what is offered. The Institution may 5739 consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. 5740 The criteria, factors, and basis for consideration of best value and the process for the consideration of 5741 5742 best value shall be as stated in the procurement solicitation.

§ 4. Definitions. -

As used in these Rules:

5745 "Affiliate" means an individual or business that controls, is controlled by, or is under common 5746 control with another individual or business. A person controls an entity if the person owns, directly or 5747 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition 5748 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 5749 members of the board of directors or similar governing body of the business or (ii) is convertible into, 5750 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 5751 partnership interest shall be deemed to be a voting security.

5752 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 5753 and various elements of required services that in total are optimal relative to the Institution's needs.

5754 "Business" means any type of corporation, partnership, limited liability company, association, or sole 5755 proprietorship operated for profit. 5756

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

5757 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 5758 procured, specifying the factors that will be used in evaluating the proposal and containing or 5759 incorporating by reference the other applicable contractual terms and conditions, including any unique 5760 capabilities or qualifications that will be required of the contractor.

5761 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the 5762 5763 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 5764 can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and 5765 5766 may be published on other appropriate websites. In addition, proposals may be solicited directly from 5767 potential contractors.

5768 3. a. Procurement of professional services. The procurement of professional services for capital 5769 projects shall be conducted using a qualification-based selection process. The Institution shall engage in 5770 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 5771 basis of initial responses and with emphasis on professional competence, to provide the required 5772 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 5773 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, 5774 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors 5775 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss 5776 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors 5777 5778 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this 5779 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information

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5780 developed in the selection process to this point, the Institution shall select in the order of preference two 5781 or more offerors whose professional qualifications and proposed services are deemed most meritorious. 5782 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory 5783 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the 5784 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be 5785 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a 5786 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and 5787 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly 5788 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to 5789 that offeror.

5790 A contract for architectural or professional engineering services relating to construction projects may 5791 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience 5792 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 5793 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 5794 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the 5795 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 5796 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 5797 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 5798 Request for Proposal stated the potential for a multi-vendor award.

5799 Multiphase professional services contracts satisfactory and advantageous to the Institution for 5800 environmental, location, design and inspection work regarding construction of infrastructure projects may 5801 be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, 5802 when completion of the earlier phases is necessary to provide information critical to the negotiation of a 5803 fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the 5804 Institution shall state the anticipated intended total scope of the project and determine in writing that the 5805 nature of the work is such that the best interests of such Institution require awarding the contract.

5806 b. Procurement of other than professional services. Selection shall be made of two or more offerors 5807 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 5808 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 5809 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but 5810 need not be the sole determining factor. After negotiations have been conducted with each offeror so 5811 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 5812 shall award the contract to that offeror. When the terms and conditions of multiple awards are so 5813 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 5814 Institution determine in writing and in its sole discretion that only one offeror has made the best 5815 proposal, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, 5816 5817 which includes the following elements:

5818 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 5819 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided 5820 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 5821 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 5822 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of 5823 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been 5824 qualified under the criteria set forth in the first solicitation.

5825 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 5826 publication on the Department of General Services' central electronic procurement website. Public notice 5827 also may be published in a newspaper of general circulation or on other appropriate websites, or both. In 5828 addition, bids may be solicited directly from potential contractors. Any additional solicitations shall 5829 include businesses selected from a list made available by the Department of Minority Business 5830 Enterprise. 5831

3. Public opening and announcement of all bids received.

5832 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 5833 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 5834 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which 5835 are helpful in determining acceptability.

5836 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple 5837 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

5838 "Construction" means building, altering, repairing, improving or demolishing any structure, building 5839 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to 5840

5841 coordinate and administer contracts for construction services for the benefit of the owner, and may also 5842 include, if provided in the contract, the furnishing of construction services to the owner.

5843 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 5844 agreement with the Commonwealth of Virginia, a public institution of higher education of the 5845 Commonwealth that has entered into a management agreement with the Commonwealth to be governed 5846 by the provisions of Subchapter 3 of the Restructuring Act. "Design-build contract" means a contract 5847 between the Institution and another party in which the party contracting with the Institution agrees to 5848 both design and build the structure, roadway or other item specified in the contract.

5849 "Goods" means all material, equipment, supplies, and printing, including information technology and 5850 telecommunications goods such as automated data processing hardware and software. "Informality" 5851 means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to 5852 Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule 5853 for the goods, services or construction being procured. "Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or 5854 5855 subsequent phase of the contract cannot be specified without the results of the first or prior phase of the 5856 contract.

5857 "Nonprofessional services" means any services not specifically identified as professional services in 5858 the definition of professional services and includes small construction projects valued not over \$1 5859 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall 5860 still apply to professional services for such small construction projects.

5861 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at 5862 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or 5863 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who 5864 5865 would have been eligible and qualified to submit a bid or proposal had the contract been procured 5866 through competitive sealed bidding or competitive negotiation.

5867 "Professional services" means work performed by an independent contractor within the scope of the 5868 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 5869 dentistry, medicine, optometry, pharmacy or professional engineering.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, 5870 5871 post, commission, committee, institution, board or political subdivision created by law to exercise some 5872 sovereign power or to perform some governmental duty, and empowered by law to undertake the 5873 activities described in these Rules.

5874 "Public contract" means an agreement between the Institution and a nongovernmental source that is 5875 enforceable in a court of law.

5876 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform 5877 fully the contract requirements and the moral and business integrity and reliability that will assure good 5878 faith performance, and who has been prequalified, if required.

5879 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects 5880 to the Invitation to Bid.

5881 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative 5882 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

5883 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction 5884 adopted by the governing body of the Covered Institution.

5885 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified 5886 goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 5887 5888 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 5889 established for bid opening.

5890 "Services" means any work performed by an independent contractor wherein the service rendered 5891 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials 5892 and supplies.

5893 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working 5894 environment and individual goals that utilizes work experience and related services for assisting the 5895 handicapped person to progress toward normal living and a productive vocational status. 5896

§ 5. Methods of procurement. -

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 5897 5898 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or 5899 competitive negotiation as provided in this section, unless otherwise authorized by law.

5900 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 5901 shall be used for design services.

5902 C. Goods, services, or insurance may be procured by competitive negotiation.

5903 D. Construction may be procured only by competitive sealed bidding, except that competitive 5904 negotiation may be used in the following instances upon a determination made in advance by the 5905 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally 5906 advantageous to the public, which writing shall document the basis for this determination:

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

5908 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or

5909 3. By the Institution for the construction of highways and any draining, dredging, excavation, grading 5910 or similar work upon real property.

5911 E. Upon a determination in writing that there is only one source practicably available for that which 5912 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed 5913 bidding or competitive negotiation. The writing shall document the basis for this determination. The 5914 Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which 5915 5916 the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement 5917 5918 system, or published in a newspaper of general circulation on the day the Institution awards or 5919 announces its decision to award the contract, whichever occurs first. Public notice shall also be 5920 published on the Department of General Services' website for the Commonwealth's central electronic 5921 procurement system and may be published on other appropriate websites.

5922 F. In case of emergency, a contract may be awarded without competitive sealed bidding or 5923 competitive negotiation; however, such procurement shall be made with such competition as is 5924 practicable under the circumstances. A written determination of the basis for the emergency and for the 5925 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 5926 written notice stating that the contract is being awarded on an emergency basis, and identifying that 5927 which is being procured, the contractor selected, and the date on which the contract was or will be 5928 awarded. This notice shall be posted in a designated public area, which may be the Department of 5929 General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to 5930 5931 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also 5932 be published on the Department of General Services' website for the Commonwealth's central electronic 5933 procurement system and other appropriate websites.

5934 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 5935 sealed bids or competitive negotiation for single or term contracts for goods and services other than 5936 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; 5937 however, such small purchase procedures shall provide for competition wherever practicable.

5938 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 5939 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases 5940 is not expected to exceed \$50,000; however such small purchase procedures shall provide for 5941 competition wherever practicable.

5942 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase 5943 of goods, products or commodities from a public auction sale is in the best interests of the public, such 5944 items may be purchased at the auction, including online public auctions. The writing shall document the 5945 basis for this determination.

5946 J. The purchase of goods or nonprofessional services, but not construction or professional services, 5947 may be made by reverse auctioning. 5948

§ 6. Cooperative procurement. -

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5949 A. In circumstances where the Institution determines and documents that statewide contracts for 5950 goods and services, including information technology and telecommunications goods and services, do not 5951 provide goods and services to the Institution that meet its business goals and objectives, the Institution is 5952 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on 5953 behalf of or in conjunction with public bodies, public or private health or educational institutions, other 5954 public or private organizations or entities, including public-private partnerships, charitable organizations, 5955 health care provider alliances or purchasing organizations or entities, or with public agencies or 5956 institutions or group purchasing organizations of the several states, territories of the United States, or the 5957 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce 5958 administrative expense in any acquisition of goods and services, other than professional services. The 5959 Institution may purchase from any authority, department, agency, institution, city, county, town, or other 5960 political subdivision of the Commonwealth's contract even if it did not participate in the request for 5961 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the 5962 procurement was being conducted on behalf of other public bodies. In such instances, deviation from the 5963 procurement procedures set forth in these Rules and the administrative policies and procedures

5964 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of 5965 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic 5966 procurement system, including the requirement for payment of applicable fees. Nothing herein shall 5967 prohibit the payment by direct or indirect means of any administrative fee that will allow for 5968 participation in any such arrangement.

5969 B. In circumstances where statewide contracts for goods and services, including information 5970 technology and telecommunications goods and services, do not provide goods and services to meet the 5971 Institution's business goals and objectives, and as authorized by the United States Congress and 5972 consistent with applicable federal regulations, and provided the terms of the contract permit such 5973 purchases:

5974 1. The Institution may purchase goods and nonprofessional services, from a United States General 5975 Services Administration contract or a contract awarded by any other agency of the United States 5976 government; and

5977 2. The Institution may purchase telecommunications and information technology goods and 5978 nonprofessional services from a United States General Services Administration contract or a contract 5979 awarded by any other agency of the United States government. 5980

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

5981 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed 5982 price design-build basis or construction management basis in accordance with the provisions of this 5983 section.

5984 B. Procurement of construction by the design-build or construction management method shall be a 5985 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the 5986 5987 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 5988 selected by the Commonwealth and requested to submit proposals. 5989

§ 8. Modification of the contract. -

5990 A. A contract awarded by the Institution may include provisions for modification of the contract 5991 during performance, but no fixed-price contract may be increased by more than 25% of the amount of 5992 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's 5993 president or his designee. In no event may the amount of any contract, without adequate consideration, 5994 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 5995 an error in its bid or offer.

5996 B. The Institution may extend the term of an existing contract for services to allow completion of 5997 any work undertaken but not completed during the original term of the contract.

5998 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 5999 modifications. 6000

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

6001 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 6002 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis 6003 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 6004 Institution shall include businesses selected from a list made available by the Department of Minority 6005 Business Enterprise.

6006 B. The Institution shall establish programs consistent with this section to facilitate the participation of 6007 small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority 6008 Business Enterprise, the United States Small Business Administration, and other public or private 6009 6010 agencies. The Institution shall submit annual progress reports on minority business procurement to the 6011 Department of Minority Business Enterprise.

6012 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 6013 analysis that documents a statistically significant disparity between the availability and utilization of 6014 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 6015 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 6016 law.

6017 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 6018 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 6019 that employing ex-offenders on the specific contract is not in its best interest.

6020 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

The Institution shall include in every contract of more than \$10,000 the following provisions: 6021

6022 1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of 6023 6024 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to 6025 discrimination in employment, except where there is a bona fide occupational qualification reasonably

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6026 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, 6027 available to employees and applicants for employment, notices setting forth the provisions of this 6028 nondiscrimination clause.

6029 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 6030 contractor, will state that such contractor is an equal opportunity employer.

6031 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 6032 shall be deemed sufficient for the purpose of meeting the requirements of this section.

6033 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every 6034 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 6035 subcontractor or vendor.

6036 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. -

6037 The Institution shall include in every contract over \$10,000 the following provisions: During the 6038 performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the 6039 contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 6040 6041 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 6042 workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 6043 6044 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the 6045 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 6046 binding upon each subcontractor or vendor.

6047 For the purposes of this section, "drug-free workplace" means a site for the "performance of work 6048 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 6049 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 6050 dispensation, possession or use of any controlled substance or marijuana during the performance of the 6051 contract. 6052

§ 12. Use of brand names. -

6053 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or 6054 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be 6055 deemed to convey the general style, type, character, and quality of the article desired. Any article that 6056 the Institution in its sole discretion determines to be the equal of that specified, considering quality, 6057 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

6058 § 13. Comments concerning specifications. -

6059 The Institution shall establish procedures whereby comments concerning specifications or other 6060 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the 6061 time set for receipt of bids or proposals or award of the contract.

§ 14. Prequalification generally; prequalification for construction. -6062

6063 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or 6064 construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its 6065 6066 implementation to allow potential contractors a fair opportunity to complete the process.

6067 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant 6068 to a pregualification process for construction projects adopted by the Institution. The process shall be 6069 consistent with the provisions of this section.

6070 The application form used in such process shall set forth the criteria upon which the qualifications of 6071 prospective contractors will be evaluated. The application form shall request of prospective contractors 6072 only such information as is appropriate for an objective evaluation of all prospective contractors 6073 pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to 6074 request, by checking the appropriate box, that all information voluntarily submitted by the contractor 6075 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the 6076 provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for 6077 construction projects, advance notice shall be given of the deadline for the submission of 6078 6079 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set 6080 for the submission of bids for such construction so as to allow the procedures set forth in this subsection 6081 to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the 6082 6083 procurement of the contract for which the prequalification applies, the Institution shall advise in writing 6084 each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the 6085 6086 reasons for the denial of prequalification and the factual basis of such reasons.

6087 A decision by the Institution denying prequalification under the provisions of this subsection shall be 6088 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

6089 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the 6090 following:

1. The contractor does not have sufficient financial ability to perform the contract that would result 6091 6092 from such procurement. If a bond is required to ensure performance of a contract, evidence that the 6093 contractor can acquire a surety bond from a corporation included on the United States Treasury list of 6094 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to 6095 establish the financial ability of the contractor to perform the contract resulting from such procurement;

6096 2. The contractor does not have appropriate experience to perform the construction project in 6097 question;

6098 3. The contractor or any officer, director or owner thereof has had judgments entered against him 6099 within the past 10 years for the breach of contracts for governmental or nongovernmental construction, 6100 including, but not limited to, design-build or construction management;

6101 4. The contractor has been in substantial noncompliance with the terms and conditions of prior 6102 construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor 6103 6104 has been in substantial noncompliance with the terms and conditions of comparable construction 6105 contracts with another public body without good cause.

6106 The Institution may not utilize this provision to deny prequalification unless the facts underlying such 6107 substantial noncompliance were documented in writing in the prior construction project file and such 6108 information relating thereto given to the contractor at that time, with the opportunity to respond;

6109 5. The contractor or any officer, director, owner, project manager, procurement manager or chief 6110 financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 6111 6112 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 of the Code of 6113 Virginia, or (iv) any substantially similar law of the United States or another state; 6114

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an 6115 6116 established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and 6117

6118 7. The contractor failed to provide to the Institution in a timely manner any information requested by 6119 the Institution relevant to subdivisions 1 through 6 of this subsection. 6120

§ 15. Negotiation with lowest responsible bidder. -

6121 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as 6122 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the 6123 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. 6124 However, the negotiation may be undertaken only under conditions and procedures described in writing 6125 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein. 6126

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

6127 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or 6128 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 6129 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 6130 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 6131 particular responsive and responsible bidder or offeror.

6132 B. The Institution may waive informalities in bids.

6133 § 17. Exclusion of insurance bids prohibited. -

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance 6134 6135 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be 6136 excluded from presenting an insurance bid proposal to the Institution in response to a request for 6137 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a 6138 prospective insurer pursuant to § 18. 6139

§ 18. Debarment. -

6140 Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in 6141 6142 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a 6143 contractor's unsatisfactory performance for the Institution. 6144

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

6145 A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 10.1-1425.8 6146 6147 of the Code of Virginia, and §§ 20 and 22 of these Rules.

6148 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets

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6149 Development Council, shall advise the Institution concerning the designation of recycled goods.

6150 § 20. Preference for Virginia products with recycled content and for Virginia firms.

6151 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or 6152 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 6153 decided by lot.

6154 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 6155 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 6156 lowest responsive and responsible bidder who is a resident of Virginia.

6157 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where 6158 goods are being offered, and existing price preferences have already been taken into account, preference 6159 shall be given to the bidder whose goods contain the greatest amount of recycled content.

6160 § 21. Preference for Virginia coal used in the Institution. -

In determining the award of any contract for coal to be purchased for use in the Institution with state 6161 6162 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest 6163 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined 6164 6165 elsewhere. 6166

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

6167 A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for 6168 6169 the purpose intended, so long as the price is not more than 10% greater than the price of the low 6170 responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

6171 B. For purposes of this section, recycled paper and paper products means any paper or paper 6172 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

6173 § 23. Withdrawal of bid due to error. -

6174 A. A bidder for a public construction contract, other than a contract for construction or maintenance 6175 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 6176 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 6177 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 6178 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made 6179 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can 6180 be clearly shown by objective evidence drawn from inspection of original work papers, documents and 6181 materials used in the preparation of the bid sought to be withdrawn.

6182 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from 6183 consideration if the price bid would have been substantially lower than the other bids due solely to the 6184 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 6185 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 6186 objective evidence drawn from inspection of original work papers, documents and materials used in the 6187 preparation of the bid sought to be withdrawn.

One of the following procedures for withdrawal of a bid shall be selected by the Institution and 6188 6189 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 6190 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 6191 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or 6192 designated official his original work papers, documents and materials used in the preparation of the bid 6193 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 6194 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 6195 instance, the work papers, documents and materials may be considered as trade secrets or proprietary 6196 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 6197 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 6198 shall have two hours after the opening of bids within which to claim in writing any mistake as defined 6199 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 6200 period has elapsed. The mistake shall be proved only from the original work papers, documents and 6201 materials delivered as required herein.

6202 B. The Institution may establish procedures for the withdrawal of bids for other than construction 6203 contracts.

6204 C. No bid shall be withdrawn under this section when the result would be the awarding of the 6205 contract on another bid of the same bidder or of another bidder in which the ownership of the 6206 withdrawing bidder is more than 5%.

6207 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to 6208 be the low bid.

6209 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or

6210 labor to or perform any subcontract or other work agreement for the person or firm to whom the 6211 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. 6212

6213 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid 6214 6215 price, provided such bidder is a responsible and responsive bidder. 6216

§ 24. Contract Pricing Arrangements. -

6217 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 6218 basis that is not prohibited by these Rules.

6219 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall 6220 be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of 6221 6222 claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or 6223 part as a percentage of such claims, shall not be prohibited by this section. 6224

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

6225 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has 6226 obtained, and continues to maintain for the duration of the work, workers' compensation coverage 6227 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the code of 6228 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 6229 evidence of such coverage.

6230 B. The Department of General Services shall provide the form to the Institution. Failure of the 6231 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 6232 of subsection A.

6233 C. No subcontractor shall perform any work on a construction project of the Institution unless he has 6234 obtained, and continues to maintain for the duration of such work, workers' compensation coverage 6235 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 6236 Virginia. 6237

§ 26. Retainage on construction contracts. -

6238 A. In any contract issued by the Institution for construction that provides for progress payments in 6239 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% 6240 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful 6241 performance of the contract. All amounts withheld may be included in the final payment.

6242 B. Any subcontract for a public project that provides for similar progress payments shall be subject 6243 to the provisions of this section.

6244 § 27. Public construction contract provisions barring damages for unreasonable delays declared void. 6245

6246 A. Any provision contained in any public construction contract of the Institution that purports to 6247 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable 6248 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the 6249 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to 6250 causes within their control shall be void and unenforceable as against public policy.

6251 B. Subsection A shall not be construed to render void any provision of a public construction contract 6252 awarded by the Institution that:

6253 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the 6254 contractor, or its subcontractors, agents or employees;

6255 2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

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

6258 C. A contractor making a claim against the Institution for costs or damages due to the alleged 6259 delaying of the contractor in the performance of its work under any public construction contract of the 6260 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage 6261 6262 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation 6263 or arbitration to be false or to have no basis in law or in fact.

6264 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 6265 the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to 6266 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 6267 6268 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 6269 determined through litigation or arbitration to have been made in bad faith.

6270 § 28. Bid bonds. -

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6271 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1

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6272 million shall be accompanied by a bid bond from a surety company selected by the bidder that is 6273 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will 6274 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 6275 5% of the amount bid.

6276 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for 6277 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

6278 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 6279 or proposals for construction contracts anticipated to be less than \$1 million.

6280 § 29. Performance and payment bonds. -

6281 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million 6282 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to 6283 any prime contractor requiring the performance of labor or the furnishing of materials for buildings, 6284 structures or other improvements to real property owned by the Institution, the contractor shall furnish to 6285 the Institution the following bonds:

6286 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 6287 conditioned upon the faithful performance of the contract in strict conformity with the plans, 6288 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a 6289 form and amount satisfactory to the Institution.

6290 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of 6291 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom 6292 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the 6293 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied 6294 or performed in the furtherance of the work.

6295 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but 6296 only for periods when the equipment rented is actually used at the site.

6297 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 6298 that are authorized to do business in Virginia. 6299

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

6300 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

6301 E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds 6302 for construction contracts below \$1 million.

6303 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor 6304 6305 conditioned upon the payment to all persons who have and fulfill contracts that are directly with the 6306 subcontractor for performing labor and furnishing materials in the prosecution of the work provided for 6307 in the subcontract.

6308 § 30. Alternative forms of security. -

6309 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 6310 escrow in the face amount required for the bond.

B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the 6311 6312 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 6313 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 6314 be granted only upon a determination that the alternative form of security proffered affords protection to 6315 the Institution equivalent to a corporate surety's bond.

6316 § 31. Bonds on other than construction contracts. -

6317 The Institution may require bid, payment, or performance bonds for contracts for goods or services if 6318 provided in the Invitation to Bid or Request for Proposal.

6319 § 32. Action on performance bond. -

6320 No action against the surety on a performance bond shall be brought by the Institution unless 6321 brought within one year after (i) completion of the contract, including the expiration of all warranties 6322 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

6323 § 33. Actions on payment bonds; waiver of right to sue. -

6324 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 6325 material in accordance with the contract documents in furtherance of the work provided in any contract 6326 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 6327 days after the day on which the claimant performed the last of the labor or furnished the last of the 6328 materials for which he claims payment, may bring an action on the payment bond to recover any 6329 amount due him for the labor or material. The obligee named in the bond need not be named a party to 6330 the action.

6331 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 6332 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's

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6333 payment bond only if he has given written notice to the contractor within 180 days from the day on 6334 which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for 6335 6336 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at 6337 6338 any place where his office is regularly maintained for the transaction of business. Claims for sums 6339 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the 6340 time limitations stated in this subsection.

6341 C. Any action on a payment bond shall be brought within one year after the day on which the 6342 person bringing such action last performed labor or last furnished or supplied materials.

6343 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 6344 it is in writing, signed by the person whose right is waived, and executed after such person has 6345 performed labor or furnished material in accordance with the contract documents. 6346

§ 34. Public inspection of certain records. -

6347 A. Except as provided in this section, all proceedings, records, contracts and other public records 6348 relating to procurement transactions shall be open to the inspection of any citizen, or any interested 6349 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). 6350

6351 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 6352 shall not be open to public inspection.

6353 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 6354 bid records within a reasonable time after the opening of all bids but prior to award, except in the event 6355 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. 6356

6357 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are 6358 6359 completed but prior to award, except in the event that the Institution decides not to accept any of the 6360 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract. 6361

6362 E. Any inspection of procurement transaction records under this section shall be subject to reasonable 6363 restrictions to ensure the security and integrity of the records.

6364 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 6365 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the 6366 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission 6367 6368 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the 6369 reasons why protection is necessary.

§ 35. Exemption for certain transactions. -

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

6372 1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be 6373 6374 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by 6375 § 23-76.1.

6376 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the 6377 Institution. However, such purchase procedures shall provide for competition where practicable.

6378 3. Procurement of any construction or planning and design services for construction by the Institution 6379 when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to 6380 conform to procurement procedures that are established by federal statutes or regulations, whether or not 6381 those federal procedures are in conformance with the provisions of these Rules. 6382

4. The University of Virginia Medical Center.

6383 5. The purchase of goods and services by the Institution when such purchases are made under a 6384 remedial plan established by the Governor pursuant to subsection C of $\S 9$ of these Rules.

6385 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 6386 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 6387 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 6388 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 6389 of the Institution's President or his designee that acceptance of the grant or contract funds under the 6390 applicable conditions is in the public interest. Such determination shall state the specific provision of 6391 these Rules in conflict with the conditions of the grant or contract.

6392 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into 6393 6394 contracts with faith-based organizations for the purposes described in this section on the same basis as

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6395 any other nongovernmental source without impairing the religious character of such organization, and 6396 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

6397 B. For the purposes of this section, "faith-based organization" means a religious organization that is 6398 or applies to be a contractor to provide goods or services for programs funded by the block grant 6399 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 6400 104-193.

6401 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this 6402 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 6403 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 6404 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of 6405 religious freedom by the recipients of such goods, services, or disbursements.

6406 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and 6407 purchase orders prominently display a nondiscrimination statement indicating that it does not 6408 discriminate against faith-based organizations.

6409 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any 6410 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on 6411 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 6412 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other 6413 organizations that contract with public bodies to account for the use of the funds provided; however, if 6414 the faith-based organization segregates public funds into separate accounts, only the accounts and 6415 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) 6416 shall be construed to supersede or otherwise override any other applicable state law.

6417 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 6418 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains. 6419 6420

6421 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from 6422 any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization 6423 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular 6424 religion.

6425 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 6426 to a contract between the Institution and a faith-based organization, objects to the religious character of 6427 the faith-based organization from which the individual receives or would receive the goods, services, or 6428 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 6429 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

6430 The Institution shall provide to each individual who applies for or receives goods, services, or 6431 disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based 6432 6433 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate 6434 6435 against you on the basis of religion, a religious belief, or your refusal to actively participate in a 6436 religious practice. If you object to a particular provider because of its religious character, you may 6437 request assignment to a different provider. If you believe that your rights have been violated, please 6438 discuss the complaint with your provider or notify the appropriate person as indicated in this form. 6439

§ 37. Exemptions from competition for certain transactions. -

6440 The Institution may enter into contracts without competition, as that term is described in subsections 6441 A through J of § 5 (Methods of procurement) of these Rules, for: 6442

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

6443 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 6444 Blind and Vision Impaired;

6445 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported 6446 employment services serving the handicapped;

- 6447 c. Private educational institutions; or
- 6448 d. Other public educational institutions.
- 6449 2. Speakers and performing artists;
- 6450 3. Memberships and Association dues;
- 6451 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 6452 goods or services by the Institution;
- 6453 5. Group travel in foreign countries;
- 6454 6. Conference facilities and services;
- 6455 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,

6456 registration and tournament fees;

6457 8. Royalties; or

6458 9. The purchase of legal services, provided that the Office of the Attorney General has been 6459 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

6460 10. Maintenance contract renewals for scientific research equipment and software, provided that the 6461 institution has posted the renewal to eVa and documented that there was only one response or less and 6462 such documentation includes a statement signed by the buyer indicating that no firm other than the 6463 original manufacturer/developer offers the service.

6464 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain 6465 transactions; limitations. -

The Institution may enter into contracts for insurance or electric utility service without competitive 6466 6467 sealed bidding or competitive negotiation if purchased through an association of which the Institution is 6468 a member if the association was formed and is maintained for the purpose of promoting the interest and 6469 welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the 6470 6471 Institution has made a determination in advance after reasonable notice to the public and set forth in 6472 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the 6473 public. The writing shall document the basis for this determination.

6474 § 39. Definitions. -6475

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

"Contractor" means the entity that has a direct contract with the Institution. 6476

6477 "Debtor" means any individual, business, or group having a delinquent debt or account with any state 6478 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

6479 "Payment date" means either (i) the date on which payment is due under the terms of a contract for 6480 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after 6481 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or 6482 services by the Institution..

6483 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to 6484 whom the contract was awarded or to any subcontractor in the performance of the work provided for in 6485 such contract. 6486

§ 40. Exemptions. -

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6487 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any 6488 public utility tariffs prescribed by the State Corporation Commission.

6489 § 41. Retainage to remain valid. -

6490 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall 6491 remain valid. 6492

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

6493 A. The Institution shall promptly pay for the completely delivered goods or services by the required 6494 payment date.

6495 Payment shall be deemed to have been made when offset proceedings have been instituted, as 6496 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

6497 B. Separate payment dates may be specified for contracts under which goods or services are provided 6498 in a series of partial deliveries or executions to the extent that such contract provides for separate 6499 payment for such partial delivery or execution. 6500

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

6501 In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would 6502 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the 6503 6504 invoice or the goods or services.

6505 § 44. Date of postmark deemed to be date payment is made. -

6506 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date 6507 payment is made for purposes of these Rules. 6508

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

Any contract awarded by the Institution shall include:

6510 1. A payment clause that obligates the contractor to take one of the two following actions within 6511 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract: 6512

6513 a. Pay the subcontractor for the proportionate share of the total payment received from the Institution 6514 attributable to the work performed by the subcontractor under that contract; or

6515 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the 6516 subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers 6517

6518 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 6519 numbers.

6520 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts 6521 owed by the contractor that remain unpaid after seven days following receipt by the contractor of 6522 payment from the Institution for work performed by the subcontractor under that contract, except for 6523 amounts withheld as allowed in subdivision 1.

6524 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest 6525 shall accrue at the rate of 1% per month."

6526 Any such contract awarded shall further require the contractor to include in each of its subcontracts a 6527 provision requiring each subcontractor to include or otherwise be subject to the same payment and 6528 interest requirements with respect to each lower-tier subcontractor.

6529 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause 6530 in this section shall not be construed to be an obligation of the Institution. A contract modification shall 6531 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement 6532 claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions. -

6533 6534 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the 6535 Institution to a vendor that remain unpaid after seven days following the payment date. However, 6536 nothing in this section shall affect any contract providing for a different rate of interest, or for the 6537 payment of interest in a different manner.

6538 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on 6539 corporate loans (prime rate) at large United States money center commercial banks as reported daily in 6540 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of 6541 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 6542 interest established pursuant to § 58.1-1812 of the Code of Virginia.

6543 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 6544 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 6545 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 6546 exception from the interest penalty provided by this subsection shall apply only to that portion of a 6547 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 6548 the disagreement.

6549 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 6550 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 6551 contractor from receiving interest on such funds under an approved escrow agreement.

6552 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or 6553 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the 6554 6555 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 6556 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days 6557 6558 following the payment date.

6559 § 47. Ineligibility. -

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from 6560 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 6561 6562 issuance of a written determination of disgualification or ineligibility, the Institution shall (i) notify the 6563 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 6564 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 6565 requested by the bidder within five business days after receipt of the notice.

Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 6566 challenging the evaluation. The Institution shall issue its written determination of disqualification or 6567 6568 ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information. 6569

6570 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 6571 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 6572 evaluation reveals that the bidder should be refused permission to participate, or disqualified from 6573 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The 6574 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 6575 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 6576 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 6577 in § 54.

6578 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in HB2464H1

6579 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 6580 restoration of eligibility.

§ 48. Appeal of denial of withdrawal of bid. -6581

6582 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 6583 6584 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 6585 instituting legal action as provided in § 54.

6586 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 6587 6588 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released 6589 only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 6590 6591 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 6592 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to 6593 Bid, the sole relief shall be withdrawal of the bid. 6594

§ 49. Determination of nonresponsibility. -

6595 A. Following public opening and announcement of bids received on an Invitation to Bid, the 6596 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed 6597 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent 6598 low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution 6599 6600 determines that the apparent low bidder is not responsible, it shall proceed as follows:

6601 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 6602 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 6603 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that 6604 relate to the determination, if so requested by the bidder within five business days after receipt of the 6605 notice.

2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 6606 challenging the evaluation. The Institution shall issue its written determination of responsibility based on 6607 6608 all information in the possession of the Institution, including any rebuttal information, within five 6609 business days of the date the Institution received the rebuttal information. At the same time, the 6610 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder 6611 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures 6612 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 6613 6614 as provided in § 54.

6615 The provisions of this subsection shall not apply to procurements involving the prequalification of 6616 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such 6617 bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the 6618 6619 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in 6620 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or 6621 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the 6622 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or 6623 directed award as provided in subsection A of § 54, or both.

6624 If it is determined that the decision of the Institution was not an honest exercise of discretion, but 6625 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state 6626 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has 6627 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

6628 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract 6629 shall proceed under this section, and may not protest the award or proposed award under the provisions 6630 of § 50 of these Rules.

6631 D. Nothing contained in this section shall be construed to require the Institution, when procuring by 6632 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 6633 to be the most advantageous. 6634

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

6635 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 6636 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 6637 notice of the award or the announcement of the decision to award shall be given by the Institution in 6638 6639 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 6640 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 6641 protest the award or decision to award such contract shall submit the protest in the same manner no 6642 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 6643 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part 6644 upon information contained in public records pertaining to the procurement transaction that are subject 6645 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 6646 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at 6647 such later time as provided in this section. No protest shall lie for a claim that the selected bidder or 6648 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest 6649 and the relief sought. The Institution or designated official shall issue a decision in writing within 10 6650 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 6651 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting 6652 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the 6653 6654 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of 6655 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 6656 standards of § 55 of these Rules.

6657 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the 6658 sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to 6659 comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or 6660 capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but 6661 performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this 6662 6663 action is in the best interest of the public. Where a contract is declared void, the performing contractor 6664 shall be compensated for the cost of performance up to the time of such declaration. In no event shall 6665 the performing contractor be entitled to lost profits.

6666 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing 6667 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to 6668 award was based on fraud or corruption or on an act in violation of these Rules, the Institution, 6669 designated official or appeals board may enjoin the award of the contract to a particular bidder.

6670 § 51. Effect of appeal upon contract. -

6671 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in 6672 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has 6673 been filed.

6674 § 52. Stay of award during protest. -

6675 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event 6676 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided 6677 in § 54, no further action to award the contract shall be taken unless there is a written determination that 6678 proceeding without delay is necessary to protect the public interest or unless the bid or offer would 6679 expire. 6680

§ 53. Contractual disputes. -

6681 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 6682 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be 6683 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing 6684 herein shall preclude a contract from requiring submission of an invoice for final payment within a 6685 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of 6686 claims shall not delay payment of amounts agreed due in the final payment.

6687 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 6688 Such procedure, which may be contained in the contract or may be specifically incorporated into the 6689 contract by reference and made available to the contractor, shall establish a time limit for a final 6690 decision in writing by the Institution. If the Institution has established administrative procedures meeting 6691 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may 6692 6693 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 6694 (ADR) as an administrative procedure.

6695 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these 6696 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's 6697 decision on the claim, unless the Institution fails to render such decision within the time specified in the 6698 contract.

6699 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within 6700 six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting 6701

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6702 legal action as provided in § 54.

§ 54. Legal actions. -

6704 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from 6705 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that 6706 6707 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest 6708 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in 6709 6710 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously 6711 6712 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in 6713 6714 accordance with the requirements of this section and the Invitation to Bid.

6715 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the 6716 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes 6717 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary 6718 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, 6719 or the terms or conditions of the Invitation to Bid.

6720 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole 6721 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or 6722 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit 6723 court challenging a proposed award or the award of a contract, which shall be reversed only if the 6724 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state 6725 6726 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

6727 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 6728 of reasonable security to protect the Institution.

6729 E. A contractor may bring an action involving a contract dispute with the Institution in the 6730 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be 6731 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of 6732 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of 6733 Accounts.

6734 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of 6735 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, 6736 the procedures shall be exhausted prior to instituting legal action concerning the same procurement 6737 transaction unless the Institution agrees otherwise.

6738 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a 6739 contractor. 6740

§ 55. Administrative appeals procedure. -

6741 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 6742 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 6743 6744 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 6745 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 6746 disinterested person or panel, the opportunity to present pertinent information and the issuance of a 6747 written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and 6748 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so 6749 6750 grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were 6751 not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely 6752 6753 manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in 6754 establishing an Alternative Dispute Resolution (ADR) procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 6755 6756 judicial review if such action is brought within 30 days of receipt of the written decision.

6757 § 56. Alternative dispute resolution. -

6758 The Institution may enter into agreements to submit disputes arising from contracts entered into 6759 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution 6760 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of 6761 Virginia, as applicable.

§ 57. Ethics in public contracting. -6762

6763 The Institution and its governing body, officers and employees shall be governed by the Ethics in

111 of 222

Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of 6764 Chapter 43 of Title 2.2 of the Code of Virginia. 6765 6766

ATTACHMENT 2

Memorandum of Agreement

6767 6768

6769

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University ERP/SciQuest Implementation with eVA

6770 The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute and State University 6771 (University) agree to the following:

6772 I. The University will use ERP/SciOuest integration as best fits its needs with its ERP system 6773 (Banner).

6774 II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to 6775 eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. Longer term a more real-time option may be mutually agreed by the Department of General 6776 Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between 6777 the ERP and eVA systems. 6778

6779 III. The University may request that eVA contract vendors provide a version of their contract catalog 6780 for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog 6781 through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA 6782 6783 transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses 6784 to issue to unregistered and registered vendors through eVA.

6785 IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is 6786 understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from 6787 mandatory processing through eVA.

6788 V. In lieu of processing individual orders for requirements through eVA, a more efficient 6789 administrative approach is to establish a blanket or standing order. The University is authorized to use 6790 such an approach where it makes good business sense. The University will ensure vendors understand 6791 that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the 6792 transaction fee will be based on the total order amount, and the vendor is required to pay the total 6793 transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule 6794 specified in the order.

6795 VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting 6796 electronic orders (Fax, Email, EDI, cXML). The University or SciOuest will print/mail/deliver all other 6797 orders to vendors. Whereas the University maintains a University specific electronic vendor record that 6798 identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA 6799 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the 6800 eVA Business Plan as follows:

6801 A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will 6802 6803 6804 pay the eVA transaction fees for these orders.

6805 B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that 6806 includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, 6807 6808 e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether 6809 6810 such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or 6811 CGI-AMS.

6812 The University further agrees that:

6813 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 6814 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed 6815 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

6816 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 6817 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

6818 3. In the event the University does not provide resolution notification to the eVA Business Manager 6819 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 6820 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

6821 VII. The University will not require separate vendor registrations as a prerequisite for responding to 6822 University solicitations. The University will participate in an enterprise workgroup to determine the best 6823 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to 6824

6825 entities. The University will have the option to receive a subset of vendor related data. Until an 6826 enterprise W-9 process is established, the University will be responsible for collection of W-9 6827 information.

VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at **6828** 6829 least six (6) months prior to change or as soon as any new plan is proposed) with the University 6830 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that 6831 may affect the technical changes described herein.

6832 IX. Integration of the University's electronic procurement solution with the University's ERP is the 6833 responsibility of the University. The solution must provide for orders, change orders and cancellations. 6834 Guidelines

1. The establishment of this agreement is intended to formulate the basis for a long-term solution for 6835 6836 electronic procurement between the University and the CoVA.

6837 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 6838 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

6839 3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data 6840 Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt **6841** orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and 6842 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements 6843 for unregistered vendor orders.

6844 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA 6845 standard format. 6846

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

6847 6. eVA Interface standard does not currently support PCard orders; however these orders may be 6848 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.

6849 Schedule

6850 The University shall implement this agreement no later than July 2006.

6851 Metrics

6852 A. The University shall comply with the following Governor's eVA Management Objective:

6853 <u>Ninety-fiveEighty</u> percent of all nonexempt orders to be processed by eVA. Includes nonexempt 6854 orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For 6855 6856 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by 6857 DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be 6858 reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

6859 B. The University shall meet the following management objectives for electronic procurement:

6860 1. Provide end users, including purchase-card users, access to an electronic system for buying;

6861 2. Conduct business with eVA registered vendors whenever possible;

6862 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically 6863 using eVA;

6864 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices; 6865

6866 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five 6867 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and 6868 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the 6869 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent 6870 6871 possible.

The University agrees that, for confirming orders, it will resolve any vendor dispute, including 6872 6873 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such 6874 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or 6875 CGI-AMS. 6876

The University further agrees that:

6877 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 6878 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed 6879 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

6880 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 6881 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

6882 c. In the event the University does not provide resolution notification to the eVA Business Manager 6883 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment 6884 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

6885 6. Timely process electronic change orders and cancellations;

7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as 6886

6887 specifically exempted by DPS; 6888 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will be responsible for the 6889 6890 accuracy of contract catalog pricing loaded into the ERP/SciQuest; 6891 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post 6892 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 6893 below); 6894 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate 6895 commodities, when such are identified; 6896 11. Complete and certify the monthly eVA Dashboard Report; and 6897 12. Timely remit any eVA transaction and non-use fees incurred by the institution. 6898 C. The University shall be subject to eVA fees assessed per the eVA Business Plan. 6899 D. The University shall assure that payments to CGI-AMS are current. 6900 EXHIBIT F 6901 6902 6903 MANAGEMENT AGREEMENT 6904 **BETWEEN** 6905 THE COMMONWEALTH OF VIRGINIA 6906 AND 6907 VIRGINIA POLYTECHNIC INSTITUTE 6908 AND STATE UNIVERSITY 6909 PURSUANT TO 6910 THE RESTRUCTURED HIGHER EDUCATION 6911 FINANCIAL AND ADMINISTRATIVE OPERATIONS 6912 ACT OF 2005 6913 6914 POLICY GOVERNING 6915 FINANCIAL OPERATIONS AND MANAGEMENT 6916 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE 6917 6918 AND STATE UNIVERSITY 6919 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT 6920 I. PREAMBLE. 6921 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 6922 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting 6923 additional authority to institutions of higher education for financial operations and management, subject 6924 to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board 6925 6926 of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations 6927 and management. 6928 This Policy is intended to cover the authority that may be granted to the University pursuant to 6929 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the 6930 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act 6931 and the University's Enabling Legislation, are not affected by this Policy. 6932 II. DEFINITIÓNS. 6933 As used in this policy, the following terms shall have the following meanings, unless the context 6934 requires otherwise: 6935 "Act" means the Restructured Higher Education Financial and Administrative Operations Act, 6936 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia. "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and 6937 6938 State University. 6939 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with 6940 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has 6941 entered into a Management Agreement with the Commonwealth to be governed by the provisions of 6942 Subchapter 3 of the Act. "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of 6943 6944 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions 6945 of the University. 6946 "Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.

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6948 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act 6949 between the University and the Commonwealth of Virginia.

6950 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 6951 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 6952 general government funds, as defined in the December 20, 2004 Report to the Governor and General 6953 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

6954 "University" means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station 6955 6956 Division (State Agency 229).

III. SCOPE OF POLICY. 6957

6958 This Policy applies to the University's responsibility for management, investment and stewardship of 6959 all its financial resources, including but not limited to, general, non-general and private funds. This 6960 responsibility includes maintaining an independent uniform system of accounting, financial reporting, 6961 and internal controls adequate to protect and account for the University's financial resources.

6962 Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the 6963 benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative 6964 Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the 6965 Agriculture Experiment Station Division shall not receive any additional independent financial operations 6966 and management authority as a result of this Management Agreement beyond the independent financial 6967 operations and management authority that it had prior to the Effective Date of the University's initial 6968 Management Agreement with the Commonwealth or that it may be granted by law in the future. 6969

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

6970 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation **6971** 6972 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 6973 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 6974 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 6975 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 6976 implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures. **6977**

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

6979 The President, acting through the Executive Vice President and Chief Operating Officer, shall 6980 continue to be authorized by the Board to maintain existing and implement new policies governing the 6981 management of University financial resources. These policies shall continue to (i) ensure compliance 6982 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting 6983 principles employed by the Commonwealth, including the use of fund accounting principles, with regard 6984 to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the 6985 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and 6986 **6987** proper use of funds from specific types of fund sources, (iii) provide adequate risk management and 6988 internal controls to protect and safeguard all financial resources, including moneys transferred to the 6989 University pursuant to a general fund appropriation, and ensure compliance with the requirements of the 6990 Appropriation Act.

6991 The financial management system shall continue to include a financial reporting system to satisfy 6992 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 6993 as specified in the related State Comptroller's Directives, and the University's separately audited financial 6994 statements. To ensure observance of limitations and restrictions placed on the use of the resources 6995 available to the University, the accounting and bookkeeping system of the University shall continue to 6996 be maintained in accordance with the principles prescribed for governmental organizations by the 6997 Governmental Accounting Standards Board.

6998 In addition, the financial management system shall continue to provide financial reporting for the 6999 President, acting through the Executive Vice President and Chief Operating Officer, and the Board of 7000 Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon 7001 the Effective Date of the initial Management Agreement between the University and the Commonwealth, 7002 except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the 7003 University shall not be required to record its financial transactions in the Commonwealth's Accounting 7004 and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in 7005 addition to CARS, but shall have its own financial reporting system. The University's financial reporting 7006 system shall provide (i) summary monthly reports for State agencies including, but not limited to, the 7007 Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and 7008 7009 Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for

7010 Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on
7011 Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible
7012 with the Commonwealth's accounting system, as may be requested by the requesting State agency, and
7013 (ii) such other special reports as may be requested from time to time.

7014 VI. FINANCIAL MÁNAGEMENT POLICIES.

7015 The President, acting through the Executive Vice President and Chief Operating Officer, shall create 7016 and implement any and all financial management policies necessary to establish a financial management 7017 system with adequate risk management and internal control processes and procedures for the effective 7018 protection and management of all University financial resources. Such policies will not address the 7019 underlying accounting principles and policies employed by the Commonwealth and the University, but 7020 rather will focus on the internal operations of the University's financial management. These policies shall 7021 include, but need not be limited to, the development of a tailored set of finance and accounting practices 7022 that seek to support the University's specific business and administrative operating environment in order 7023 to improve the efficiency and effectiveness of its business and administrative functions. In general, the 7024 system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management 7025 7026 and internal accounting controls to ensure University financial resources are properly safeguarded and 7027 that appropriate stewardship of public funds is obtained through management's oversight of the effective 7028 and efficient use of such funds in the performance of University programs.

7029 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the
7030 University shall continue to follow the Commonwealth's accounting policies until such time as specific
7031 alternate policies can be developed, approved and implemented. Such alternate policies shall include
7032 applicable accountability measures and shall be submitted to the State Comptroller for review and
7033 comment before they are implemented by the University.

7033 Comment before mey are implemented by the University. 7034 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

7035 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the 7036 University shall have the power and authority to manage all monies received by it. All State general 7037 funds to be allocated to the University shall remain subject to the appropriations process.

7038 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher 7039 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 7040 Assembly the degree to which each public institution of higher education of the Commonwealth has met 7041 the financial and administrative management and educational-related performance benchmarks called for 7042 by that subsection and approved as part of the Appropriation Act then in effect for the State goals and 7043 objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 7044 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year 7045 for which the financial and administrative management and educational-related performance benchmarks 7046 described in § 23-9.6:1.01 of the Code of Virginia, are effective, as provided in a general Appropriation 7047 Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth 7048 that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance 7049 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 of the Act, shall 7050 receive certain financial incentives, including the interest on the tuition and fees and other non-general 7051 fund Educational and General Revenues deposited into the State Treasury by the public institution of 7052 higher education.

7053 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for 7054 which it has received such certification from SCHEV, the University is authorized to hold and invest 7055 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise 7056 funds, and all other non-general fund revenues subject to the following requirements:

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

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

7061 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational 7062 7063 and General Revenues. Interest earned on the escrow account shall be deposited to the account. Upon 7064 receipt of the required State Council of Higher Education for Virginia certification that the University 7065 has met such institutional performance benchmarks and the conditions prescribed in subsection B of 7066 § 23-38.88 of the Act, the Governor shall include in the next budget bill a non-general fund 7067 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the 7068 amount deposited in the escrow account as the financial incentive provided in subdivision 1 of 7069 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If 7070 public institutions of higher education of the Commonwealth are permitted, or the University in

7071 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 7072 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow. 7073

7074 iv) If in any given year the University does not receive the certification from the State Council of 7075 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by 7076 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall 7077 transfer to the general fund the balance in the escrow account as of June 30 of that year.

7078 v) Beginning on the effective date of its initial Management Agreement with the University until the 7079 beginning of the first fiscal year following the fiscal year for which it has received the required 7080 certification from SCHEV, the University shall continue to deposit tuition and all other non-general 7081 funds with the State Treasurer by the same process that it would have been required to use if it had not 7082 entered into a Management Agreement with the Commonwealth.

7083 vi) On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all cash balances held by the 7084 7085 State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored 7086 programs, auxiliary enterprises, and all other non-general fund revenues.

7087 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay 7088 these funds to the University as specified in Section IX below.

7089 The University also shall have sum sufficient appropriation authority for all non-general funds as 7090 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 7091 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 7092 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 7093 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 7094 7095 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year. 7096

7097 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 7098 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 7099 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue 7100 7101 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, 7102 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from 7103 7104 changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than 7105 7106 reverting such savings back to the Commonwealth. This financial resource policy assists the University 7107 by providing the framework for retaining and managing non-general funds, for the receipt of general 7108 funds, and for the use and stewardship of all these funds.

7109 The President, acting through the Executive Vice President and Chief Operating Officer, shall 7110 continue to provide oversight of the University's cash management system which is the framework for 7111 the retention of non-general funds. The Internal Audit Department of the University shall periodically 7112 audit the University's cash management system in accordance with appropriate risk assessment models 7113 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight 7114 shall continue to be provided through the annual audit and assessment of internal controls performed by 7115 the Auditor of Public Accounts. For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the 7116 7117 Code of Virginia as it currently exists and from time to time may be amended. 7118

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

7119 The President, through the Executive Vice President and Chief Operating Officer, shall continue to 7120 be authorized to create and implement any and all Accounts Receivable Management and Collection 7121 policies as part of a system for the management of University financial resources. The policies shall be 7122 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the 7123 Code of Virginia, such that the University shall take all appropriate and cost effective actions to 7124 aggressively collect accounts receivable in a timely manner.

7125 These shall include, but not be limited to, establishing the criteria for granting credit to University 7126 customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after 7127 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 7128 7129 collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 7130 7131 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's 7132 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the

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7133 State Comptroller to implement such Programs, and shall provide a quarterly summary report of
7134 receivables to the Department of Accounts in accordance with the reporting procedures established
7135 pursuant to the Virginia Debt Collection Act.

7136 IX. DISBURSEMENT MANAGEMENT.

7137 The President, acting through the Executive Vice President and Chief Operating Officer, shall 7138 continue to be authorized to create and implement any and all disbursement policies as part of a system 7139 for the management of University financial resources. The disbursement management policies shall 7140 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the 7141 execution of the University's operations. These policies also shall continue to address the timing of 7142 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the 7143 appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic 7144 7145 7146 payments. Since the University no longer will interface to the CARS system or any replacement for the 7147 CARS system for disbursements, the University shall establish its own mechanisms for electronic 7148 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the 7149 Commonwealth's Debt Set-Off Collection Programs.

7150 Beginning with the fiscal year after the first fiscal year for which it first receives the required
7151 certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.
7153 Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation
for Educational and General programs on *or about* the first and fifteenth days of each month *with adjustments needed to meet short-term cash requirements associated with the Commonwealth's bimonthly pay dates*, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or
after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year
in order to meet student obligations;

7162 ii) The University may draw down the sum of all tuition and E&G fees and all other nongeneral7163 revenues deposited to the State Treasury each day on the same business day they were deposited; and

7164 iii) The University anticipates that expenditures could exceed available revenues from time to time
7165 during the year if the above disbursement schedule is used. When the University projects a cash deficit
7166 is likely in activities supported by general fund appropriations, the University may make a request to the
7167 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in
7168 a form and within a timeframe agreeable to the parties, in order to cover expenditures.

7169 These disbursement policies shall authorize the President, acting through the Executive Vice 7170 President and Chief Operating Officer, to independently select, engage, and contract for such consultants, 7171 accountants, and financial experts, and other such providers of expert advice and consultation, and, after 7172 consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable 7173 in his or her discretion. The policies also shall continue to include the ability to locally manage and 7174 administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject 7175 to any restrictions contained in the Commonwealth's contracts governing those programs, provided that 7176 the University shall submit the credit card and cost recovery aspects of its financial and operations 7177 policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control 7178 7179 procedures shall be maintained over previously decentralized processes for public records, payroll, and 7180 non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment 7181 reports to the Department of Accounts in accordance with the reporting procedures established pursuant 7182 to the Prompt Payment Act.

7183 The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.

7189 X. DEBT MANAGEMENT.

7190 The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.

7193 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,

7194 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury 7195 Board, and that are consistent with debt capacity and management policies and guidelines established by 7196 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, 7197 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any 7198 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided 7199 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 7200 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 7201 7202 comment prior to its adoption by the University.

7203 The University recognizes that there are numerous types of financing structures and funding sources 7204 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Executive Vice President and Chief Operating Officer, within the 7205 7206 context of the overall portfolio to ensure that any financial product or structure is consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the 7207 7208 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a 7209 full understanding of the transaction, including (i) the identification of potential risks and benefits, and 7210 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized 7211 7212 by resolution of the Board, providing that they do not constitute State Tax Supported Debt. 7213

XI. INVESTMENT POLICY.

7214 It is the policy of the University to invest its operating and reserve funds solely in the interest of the 7215 University and in a manner that will provide the highest investment return with the maximum security 7216 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence 7217 7218 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like 7219 7220 aims.

7221 Endowment investments shall be invested and managed in accordance with the Uniform Management 7222 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

The Board of Visitors shall periodically review and approve the investment guidelines governing the 7223 7224 University's operating and reserve funds. 7225

XII. INSURANCE AND RISK MANAGEMENT.

7226 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any 7227 intent during the next biennium to withdraw from any insurance or risk management program made 7228 available to the University through the Commonwealth's Division of Risk Management and in which the 7229 University is then participating, to enable the Commonwealth to complete an adverse selection analysis 7230 of any such decision and to determine the additional costs to the Commonwealth that would result from 7231 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University 7232 proceeds to withdraw from the insurance or risk management program, the University shall reimburse 7233 the Commonwealth for all such additional costs attributable to such withdrawal as determined by the 7234 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University 7235 and the Commonwealth.

7236 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 7237 30, 20102012, provided that on or before November 15, 2011, the Governor provides to the Chairmen 7238 of the House Committee on Appropriations and the Senate Committee on Finance written notification 7239 that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015. 7240 72/1

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7243	MANAGEMENT AGREEMENT	
7244	BETWEEN	
7245	THE COMMONWEALTH OF VIRGINIA	
7246	AND	
7247	THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA	
7248	PURSUANT TO	
7249	THE RESTRUCTURED HIGHER EDUCATION	
7250	FINANCIAL AND ADMINISTRATIVE OPERATIONS	
7251	ACT OF 2005	
7252		
7253	POLICY GOVERNING CAPITAL PROJECTS	
7254		
7255	THE RECTOR AND VISITORS OF	

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA POLICY GOVERNING CAPITAL PROJECTS

7258 I. PREAMBLE.

7259 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 7260 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the 7261 College of William and Mary in Virginia may be delegated the authority to establish its own system for 7262 undertaking the implementation of its capital projects. In general, status as a Covered Institution is 7263 designed to replace the post-authorization system of reviews, approvals, policies and procedures carried 7264 out by a variety of central State agencies, and also the traditional pre-authorization approval process for 7265 projects funded entirely with non-general funds and without any proceeds from State Tax Supported 7266 Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be 7267 governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the 7268 7269 Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, 7270 Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the 7271 adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state 7272 general fund appropriation, State Tax Supported Debt, or funding from other sources.

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

7277 II. DEFINITIONS.

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

7280 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,7281 Chapter 4.10 of Title 23 of the Code of Virginia.

7282 "Board of Visitors" or "Board" means the Rector and Visitors of the College of William and Mary in7283 Virginia.

7284 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting7285 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

7286 "Capital Professional Services" means professional engineering, architecture, land surveying and 7287 landscape architecture services related to capital projects.

7288 "Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

7291 "College" means the College of William and Mary in Virginia, (State Agency 204), and the Virginia7292 Institute of Marine Science, (State Agency 268).

7293 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
7294 public institution of higher education of the Commonwealth of Virginia that has entered into a
7295 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
7296 the Act.

7297 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
7298 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
7299 of the individual public institutions of higher education of the Commonwealth, and as provided in
7300 §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

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

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

7309 This Policy applies to the planning and budget development for capital projects, capital project
7310 authorization, and the implementation of capital projects, whether funded by a general fund
7311 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
7312 sources.

This Policy provides guidance for 1) the process for developing one or more capital project programs
for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services
and construction services, 4) design reviews and code approvals for capital projects, 5) environmental
impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land

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7317 dispositions, 9) project management systems, and 10) reporting requirements.

7318 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

7319 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the 7320 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 7321 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 7322 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 7323 the duties and responsibilities set forth in this Policy to a person or persons within the College, who, 7324 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 7325 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 7326 and procedures. 7327

V. CAPITAL PROGRAM.

7328 The President shall adopt a system for developing one or more capital project programs that defines 7329 or define the capital needs of the College for a given period of time consistent with the College's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major 7330 7331 7332 Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General 7333 Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements 7334 for capital plans. The Board may approve amendments to the program for Major Capital Projects 7335 annually or more often if circumstances warrant.

7336 It shall be College policy that each capital project program shall meet the College's mission and 7337 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College 7338 policy that each capital project shall be of a size and scope to provide for the defined program needs, 7339 designed in accordance with all applicable building codes and handicapped accessibility standards as 7340 well as the College's design guidelines and standards, and costed to reflect current costs and escalated to 7341 the mid-point of anticipated construction.

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VI. AUTHORIZATION OF CAPITAL PROJECTS

7343 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its 7344 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for 7345 approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that 7346 are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds 7347 from State Tax Supported Debt, shall require both Board of Visitors approval and those 7348 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the 7349 State's process for capital budget requests.

7350 It shall be the policy of the College that the implementation of capital projects shall be carried out so 7351 that the capital project as completed is the capital project approved by the Board for Major Capital 7352 Projects and according to the procedures adopted by the President, acting through his designee, for all other capital projects. The President shall ensure strict adherence to this requirement. 7353

7354 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond 7355 the plans and justifications that were the basis for the capital project's approval, either before or during 7356 construction, unless approved in advance as described above. Minor changes shall be permissible if they 7357 are determined by the President, acting through his designee, to be justified.

7358 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must 7359 include a statement of urgency if not part of the approved Major Capital Project program.

VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 7360 7361 SERVICES.

7362 It shall be the policy of the College that procurements shall result in the purchase of high quality 7363 services and construction at reasonable prices and shall be consistent with the Policy Governing the 7364 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 7365 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and 7366 Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed 7367 to:

7368 Seeking competition to the maximum practical degree, taking into account the size of the anticipated 7369 procurement, the term of the resulting contract and the likely extent of competition;

7370 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the 7371 appearance of any impropriety prohibited by State law or College policy; 7372

Making procurement rules clear in advance of any competition;

7373 Providing access to the College's business to all qualified vendors, firms and contractors, with no 7374 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in 7375 cooperative procurements and to meet special needs of the College;

Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against 7376 7377 employees or applicants because of race, religion, color, sex, national origin, age, disability or other 7378 basis prohibited by State law except where there is a bona fide occupational qualification reasonably

7379 necessary to the contractor's normal operations;

7380 Providing for a non-discriminatory procurement process, and including appropriate and lawful 7381 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small 7382 businesses and to promote and encourage a diversity of suppliers.

7383 The President, acting through his designee, is authorized to develop implementing procedures for the 7384 procurement of Capital Professional Services and construction services at the College. The procedures 7385 shall implement this Policy and provide for:

7386 A system of competitive negotiation for Capital Professional Services, including a procedure for 7387 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, 7388 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of 7389 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

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A prequalification procedure for contractors or products;

7391 A procedure for special construction contracting methods, including but not limited to design-build 7392 and construction management contracts; and

7393 A prompt payment procedure.

7394 The College also may enter into cooperative arrangements with other private or public health or 7395 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, 7396 in the judgment of the College, the purposes of this Policy will be furthered.

7397 VIII. DESIGN REVIEWS AND CODE APPROVALS.

7398 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final 7399 Major Capital Project authorization based on the size, scope and cost estimate provided with the design. 7400 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be 7401 required. For all capital projects other than Major Capital Projects, the President, acting through his 7402 designee, shall adopt procedures for design review and project authorization based on the size, scope and 7403 cost estimate provided with the design. It shall be the College's policy that all capital projects shall be 7404 designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code 7405 (VUSBC) standards and the applicable accessibility code.

7406 The President shall designate a Building Official responsible for building code compliance at the 7407 College, including the Virginia Institute of Marine Science and Richard Bland College, by either (i) 7408 hiring an individual to be the College Building Official, or (ii) continuing to use the services of the 7409 Department of General Services, Division of Engineering and Buildings, to perform the Building Official 7410 function. If option (i) is selected, the individual hired as the College Building Official shall be a 7411 full-time an employee of the College who has no other assigned duties or responsibilities at the 7412 institution and who is not employed by any firm or business provided facility services to the College, a 7413 registered professional architect or engineer, and certified by the Department of Housing and Community 7414 Development to perform this Building Official function. The College Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall 7415 7416 determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such 7417 7418 7419 capital project has been inspected by the State Fire Marshal or his designee as required. When serving 7420 as the College Building Official, such individual shall organizationally report directly and exclusively to 7421 the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code 7422 review requirement by maintaining a review unit of licensed professional architects or engineers 7423 supported by resources and staff who are certified by the Department of Housing and Community 7424 Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall 7425 review plans, specifications and documents for compliance with building codes and standards and 7426 perform required inspections of work in progress and the completed capital project. No individual 7427 licensed professional architect or engineer hired under the College's personnel system as a member of 7428 the review unit or contracted with to perform these functions shall also perform other building 7429 code-related design, construction, facilities-related project management or facilities management functions for the College on the same capital project. 7430 7431

IX. ENVIRONMENTAL IMPACT REPORTS.

7432 It shall be the policy of the College to assess the environmental, historic preservation, and 7433 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts 7434 to the extent practicable. The College shall develop a procedure for the preparation and approval of 7435 environmental impact reports for capital projects, in accordance with State environmental, historic 7436 preservation, and conservation requirements generally applicable to capital projects otherwise meeting 7437 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of 7438 \$300,000 or more.

7439 X. BUILDING DEMOLITIONS.

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7440 It shall be the policy of the College to consider the environmental and historical aspects of any 7441 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. 7442 The College shall develop a procedure for the preparation and review of demolition requests, including 7443 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review 7444 Board in accordance with State historic preservation requirements generally applicable to capital projects 7445 in the Commonwealth. Further, for any property that was acquired or constructed with funding from a 7446 general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, 7447 general laws applicable to State owned property shall apply. 7448

XI. BUILDING OR LAND ACQUISITIONS.

7449 It is the policy of the College that capital projects involving building or land acquisition shall be 7450 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.

The President, acting through his designee, shall ensure that the project management system 7451 7452 implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters 7453 relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the 7454 7455 acquisition can be made without substantial risk of liability to the College and that the cost of the real 7456 property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, 7457 7458 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following 7459 specific policies pertaining to the acquisition of buildings or land for capital projects are carried out. 7460

A. Environmental and Land Use Considerations.

7461 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition. 7462 Such cooperation shall include but not be limited to furnishing any information that the locality may 7463 reasonably request and reviewing any requests by the locality with regard to any such acquisition. The 7464 College shall consider the zoning and comprehensive plan designation by the locality of the building or 7465 land and surrounding parcels, as well as any designation by State or federal agencies of historically or 7466 archeologically significant areas on the land. Nothing herein shall be construed as requiring the College 7467 to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

7469 The President, acting through his designee, shall ensure that, in the case of capital projects involving 7470 the acquisition of buildings or land, the project management systems implemented under Section XIII 7471 below provide for a review of the following matters prior to acquisition of the building or land: that any 7472 land can be developed for its intended purpose without extraordinary cost; that an environmental 7473 engineer has been engaged by the College to provide an assessment of any environmental conditions on 7474 the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the 7475 building or land; that utilities and other services to the land are adequate or can reasonably be provided 7476 or have been provided in the case of building acquisitions; and that the condition and grade of the soils 7477 have been examined to determine if any conditions exist that would require extraordinary site work or 7478 foundation systems. 7479

C. Title and Survey.

7480 A survey shall be prepared for any real property acquired, and an examination of title to the real 7481 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title 7482 insurance shall be procured from a title insurance company authorized to do business in the 7483 Commonwealth. Based upon the survey and title examination or report, the President, acting through his 7484 designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to 7485 the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the College's ability to own, occupy, 7486 7487 convey or develop the real property. 7488

D. Appraisal.

7489 An appraisal shall be conducted of the real property to be acquired to determine its fair market value 7490 and the consistency of the fair market value with the price agreed upon by the College. 7491

XII. BUILDING OR LAND DISPOSITIONS.

7492 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or 7493 buildings, the acquisition or construction of which was funded entirely or in part by a general fund 7494 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to 7495 7496 State-owned property and with the College's Enabling Legislation.

7497 XIII. PROJECT MANAGEMENT SYSTEMS.

7498 The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management 7499 7500 authority to appropriate College officials, including a grant of authority to such officials to engage in 7501 further delegation of authority as the President deems appropriate.

7502 The project management systems for capital projects shall be designed to ensure that such projects 7503 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely 7504 related subjects such as selection of architects or policies applicable to College buildings and grounds.

7505 The project management systems may include one or more reporting systems applicable to capital 7506 projects whereby College officials responsible for the management of such projects provide appropriate 7507 and timely reports to the President on the status of such projects during construction.

7508 XIV. REPORTING REQUIREMENTS.

7509 In addition to complying with any internal reporting systems contained in the College's project 7510 management systems, as described in Section XIII above, the College shall comply with State reporting 7511 requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation 7512 by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs 7513 improvements on land, or renovates property, that originally was acquired or constructed in whole or in 7514 part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and 7515 such improvements or renovations are undertaken entirely with funds not appropriated by the General 7516 Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 7517 million dollars, the decision to undertake such improvements or renovations shall be communicated as 7518 required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through his 7519 designee, shall report to the Department of General Services on the status of such capital projects at the 7520 initiation of the project, prior to the commencement of construction, and at the time of acceptance of 7521 any such capital project. 7522

ATTACHMENT 1

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

Restructured Higher Education Financial and Administrative Operations Act,

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

7529 In accordance with the provisions of the Restructured Higher Education Financial and Administrative 7530 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the 7531 7532 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth 7533 pursuant to Subchapter 3 of the Act, has adopted the following Rules Governing Procurement of Goods, 7534 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and 7535 construction by the Institution, excluding the University of Virginia Medical Center: 7536

§ 1. Purpose. -

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7537 The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, 7538 services, insurance, and construction by the Institution from nongovernmental sources, to include 7539 governmental procurement that may or may not result in monetary consideration for either party. These 7540 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the 7541 Institution, the contractor, or some third party is providing the consideration. 7542

§ 2. Scope of Procurement Authority. -

7543 Subject to these Rules, and the Institution's continued substantial compliance with the terms and 7544 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the 7545 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and 7546 exercise all of the authority relating to procurement of goods, services, insurance, and construction, 7547 including but not limited to capital outlay-related procurement and information technology-related 7548 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring 7549 Act.

§ 3. Competition is the Priority. -

7550 7551 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all 7552 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any 7553 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's 7554 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body 7555 of the Institution that competition be sought to the maximum feasible degree, that procurement 7556 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad 7557 flexibility in fashioning details of such competition, that the rules governing contract awards be made 7558 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing 7559 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely 7560 exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not 7561 construction or professional services. Professional services will be procured using a qualification-based 7562

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selection process. The criteria, factors, and basis for consideration of best value and the process for the 7563 7564 consideration of best value shall be as stated in the procurement solicitation.

7565 § 4. Definitions. -7566

As used in these Rules:

"Affiliate" means an individual or business that controls, is controlled by, or is under common 7567 7568 control with another individual or business. A person controls an entity if the person owns, directly or 7569 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition 7570 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 7571 members of the board of directors or similar governing body of the business or (ii) is convertible into, 7572 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 7573 partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, 7574 7575 and various elements of required services that in total are optimal relative to the Institution's needs.

7576 "Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit. 7577 7578

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

7579 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 7580 procured, specifying the factors that will be used in evaluating the proposal and containing or 7581 incorporating by reference the other applicable contractual terms and conditions, including any unique 7582 capabilities or qualifications that will be required of the contractor.

7583 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 7584 proposals by publication in a newspaper or newspapers of general circulation in the area in which the 7585 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice 7586 7587 also shall be published on the Department of General Services' central electronic procurement website 7588 and may be published on other appropriate websites. In addition, proposals may be solicited directly 7589 from potential contractors.

7590 3. a. Procurement of professional services. The procurement of professional services for capital 7591 projects shall be conducted using a qualification-based selection process. The Institution shall engage in 7592 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 7593 basis of initial responses and with emphasis on professional competence, to provide the required 7594 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 7595 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, 7596 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors 7597 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss 7598 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where 7599 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors 7600 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this 7601 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information 7602 developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. 7603 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory 7604 7605 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the

7606 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be 7607 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and 7608 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly 7609 7610 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to 7611 that offeror.

7612 A contract for architectural or professional engineering services relating to construction projects may 7613 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience 7614 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 7615 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 7616 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the 7617 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 7618 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 7619 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 7620 Request for Proposal stated the potential for a multi-vendor award. Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and 7621 inspection work regarding construction of infrastructure projects may be negotiated and awarded based 7622 7623 on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier 7624 phases is necessary to provide information critical to the negotiation of a fair and reasonable price for

succeeding phases. Prior to the procurement of any such contract, the Institution shall state the 7625 7626 anticipated intended total scope of the project and determine in writing that the nature of the work is 7627 such that the best interests of such Institution require awarding the contract.

7628 b. Procurement of other than professional services. Selection shall be made of two or more offerors 7629 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 7630 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 7631 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but 7632 need not be the sole determining factor. After negotiations have been conducted with each offeror so 7633 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 7634 shall award the contract to that offeror. When the terms and conditions of multiple awards are so 7635 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 7636 Institution determine in writing and in its sole discretion that only one offeror has made the best 7637 proposal, a contract may be negotiated and awarded to that offeror.

7638 "Competitive sealed bidding" is a method of contractor selection, other than for professional services, 7639 which includes the following elements:

7640 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 7641 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided 7642 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 7643 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 7644 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of 7645 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been 7646 qualified under the criteria set forth in the first solicitation.

7647 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 7648 publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. 7649 7650 In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall 7651 include businesses selected from a list made available by the Department of Minority Business 7652 Enterprise. 7653

3. Public opening and announcement of all bids received.

7654 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 7655 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 7656 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which 7657 are helpful in determining acceptability.

7658 Award to the lowest responsive and responsible bidder. When the terms and conditions of 5. 7659 multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder. 7660 "Construction" means building, altering, repairing, improving or demolishing any structure, building

or highway, and any draining, dredging, excavation, grading or similar work upon real property. "Construction management contract" means a contract in which a party is retained by the owner to 7661

7662 7663 coordinate and administer contracts for construction services for the benefit of the owner, and may also 7664 include, if provided in the contract, the furnishing of construction services to the owner.

7665 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 7666 agreement with the Commonwealth of Virginia, a public institution of higher education of the 7667 Commonwealth that has entered into a management agreement with the Commonwealth to be governed 7668 by the provisions of Subchapter 3 of the Restructuring Act.

7669 "Design-build contract" means a contract between the Institution and another party in which the party 7670 contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract. 7671

7672 "Goods" means all material, equipment, supplies, and printing, including information technology and 7673 telecommunications goods such as automated data processing hardware and software.

7674 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of 7675 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured. 7676

7677 "Multiphase professional services contract" means a contract for the providing of professional 7678 services where the total scope of work of the second or subsequent phase of the contract cannot be 7679 specified without the results of the first or prior phase of the contract.

7680 "Nonprofessional services" means any services not specifically identified as professional services in 7681 the definition of professional services and includes small construction projects valued not over \$1 7682 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall 7683 still apply to professional services for such small construction projects.

7684 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at 7685 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or

7686 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the 7687 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who 7688 would have been eligible and qualified to submit a bid or proposal had the contract been procured 7689 through competitive sealed bidding or competitive negotiation.

7690 "Professional services" means work performed by an independent contractor within the scope of the 7691 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 7692 dentistry, medicine, optometry, pharmacy or professional engineering.

7693 "Public body" means any legislative, executive or judicial body, agency, office, department, authority, 7694 post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the 7695 7696 activities described in these Rules.

7697 "Public contract" means an agreement between the Institution and a nongovernmental source that is 7698 enforceable in a court of law.

7699 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform 7700 fully the contract requirements and the moral and business integrity and reliability that will assure good 7701 faith performance, and who has been prequalified, if required.

7702 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects 7703 to the Invitation to Bid.

7704 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia. 7705

"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction 7706 7707 adopted by the governing body of the Covered Institution.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified 7708 7709 goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 7710 7711 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 7712 established for bid opening.

7713 "Services" means any work performed by an independent contractor wherein the service rendered 7714 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials 7715 and supplies.

7716 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working 7717 environment and individual goals that utilizes work experience and related services for assisting the 7718 handicapped person to progress toward normal living and a productive vocational status. 7719

§ 5. Methods of procurement. -

7720 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 7721 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or 7722 competitive negotiation as provided in this section, unless otherwise authorized by law.

7723 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 7724 shall be used for design services. 7725

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

Construction may be procured only by competitive sealed bidding, except that competitive 7726 D. negotiation may be used in the following instances upon a determination made in advance by the 7727 7728 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally 7729 advantageous to the public, which writing shall document the basis for this determination: 7730

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

7731 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or By the Institution for the construction of highways and any draining, dredging, excavation, 7732 7733 grading or similar work upon real property.

7734 E. Upon a determination in writing that there is only one source practicably available for that which 7735 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed 7736 bidding or competitive negotiation. The writing shall document the basis for this determination. The 7737 Institution shall issue a written notice stating that only one source was determined to be practicably 7738 available, and identifying that which is being procured, the contractor selected, and the date on which 7739 the contract was or will be awarded. This notice shall be posted in a designated public area, which may 7740 be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or 7741 7742 announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic 7743 7744 procurement system and may be published on other appropriate websites.

In case of emergency, a contract may be awarded without competitive sealed bidding or 7745 F. 7746 competitive negotiation; however, such procurement shall be made with such competition as is 7747 practicable under the circumstances. A written determination of the basis for the emergency and for the

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7748 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 7749 written notice stating that the contract is being awarded on an emergency basis, and identifying that 7750 which is being procured, the contractor selected, and the date on which the contract was or will be 7751 awarded. This notice shall be posted in a designated public area, which may be the Department of 7752 General Services' website for the Commonwealth's central electronic procurement system, or published 7753 in a newspaper of general circulation on the day the Institution awards or announces its decision to 7754 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also 7755 be published on the Department of General Services' website for the Commonwealth's central electronic 7756 procurement system and other appropriate websites.

7757 The Institution may establish purchase procedures, if adopted in writing, not requiring G. competitive sealed bids or competitive negotiation for single or term contracts for goods and services 7758 7759 other than professional services if the aggregate or the sum of all phases is not expected to exceed 7760 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

The Institution may establish purchase procedures, if adopted in writing, not requiring 7761 Η. competitive negotiation for single or term contracts for professional services if the aggregate or the sum 7762 7763 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide 7764 for competition wherever practicable.

7765 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase 7766 of goods, products or commodities from a public auction sale is in the best interests of the public, such 7767 items may be purchased at the auction, including online public auctions. The writing shall document the 7768 basis for this determination.

7769 J. The purchase of goods or nonprofessional services, but not construction or professional services, 7770 may be made by reverse auctioning. 7771

§ 6. Cooperative procurement.

7772 A. In circumstances where the Institution determines and documents that statewide contracts for 7773 goods and services, including information technology and telecommunications goods and services, do not 7774 provide goods and services to the Institution that meet its business goals and objectives, the Institution is 7775 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on 7776 behalf of or in conjunction with public bodies, public or private health or educational institutions, other 7777 public or private organizations or entities, including public-private partnerships, charitable organizations, 7778 health care provider alliances or purchasing organizations or entities, or with public agencies or 7779 institutions or group purchasing organizations of the several states, territories of the United States, or the 7780 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce 7781 administrative expense in any acquisition of goods and services, other than professional services. The 7782 Institution may purchase from any authority, department, agency, institution, city, county, town, or other 7783 political subdivision of the Commonwealth's contract even if it did not participate in the request for 7784 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from 7785 7786 the procurement procedures set forth in these Rules and the administrative policies and procedures 7787 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of 7788 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall 7789 7790 prohibit the payment by direct or indirect means of any administrative fee that will allow for 7791 participation in any such arrangement.

7792 In circumstances where statewide contracts for goods and services, including information Β. 7793 technology and telecommunications goods and services, do not provide goods and services to meet the 7794 Institution's business goals and objectives, and as authorized by the United States Congress and 7795 consistent with applicable federal regulations, and provided the terms of the contract permit such 7796 purchases:

7797 1. The Institution may purchase goods and nonprofessional services, from a United States General 7798 Services Administration contract or a contract awarded by any other agency of the United States 7799 government; and

7800 The Institution may purchase telecommunications and information technology goods and 2. 7801 nonprofessional services from a United States General Services Administration contract or a contract 7802 awarded by any other agency of the United States government. 7803

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

7804 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed 7805 price design-build basis or construction management basis in accordance with the provisions of this 7806 section.

7807 B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 7808

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7809 qualifications. Based upon the information submitted and any other relevant information which the 7810 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 7811 selected by the Commonwealth and requested to submit proposals. 7812

§ 8. Modification of the contract. -

7813 A. A contract awarded by the Institution may include provisions for modification of the contract 7814 during performance, but no fixed-price contract may be increased by more than 25% of the amount of 7815 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's 7816 president or his designee. In no event may the amount of any contract, without adequate consideration, 7817 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 7818 an error in its bid or offer.

7819 B. The Institution may extend the term of an existing contract for services to allow completion of 7820 any work undertaken but not completed during the original term of the contract.

7821 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 7822 modifications. 7823

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

7824 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 7825 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 7826 7827 Institution shall include businesses selected from a list made available by the Department of Minority 7828 Business Enterprise.

7829 B. The Institution shall establish programs consistent with this section to facilitate the participation 7830 of small businesses and businesses owned by women and minorities in procurement transactions. The 7831 programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private 7832 7833 agencies. The Institution shall submit annual progress reports on minority business procurement to the 7834 Department of Minority Business Enterprise.

7835 Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive C. 7836 analysis that documents a statistically significant disparity between the availability and utilization of 7837 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 7838 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 7839 law.

7840 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 7841 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 7842 that employing ex-offenders on the specific contract is not in its best interest. 7843

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

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

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

7846 a. The contractor will not discriminate against any employee or applicant for employment because of 7847 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to 7848 discrimination in employment, except where there is a bona fide occupational qualification reasonably 7849 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, 7850 available to employees and applicants for employment, notices setting forth the provisions of this 7851 nondiscrimination clause.

7852 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer. 7853

7854 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 7855 shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 7856 7857 7858 subcontractor or vendor. 7859

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

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

7861 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace 7862 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 7863 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 7864 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 7865 workplace and specifying the actions that will be taken against employees for violations of such 7866 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 7867 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 7868 binding upon each subcontractor or vendor. 7869

For the purposes of this section, "drug-free workplace" means a site for the "performance of work 7870

7871 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 7872 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 7873 dispensation, possession or use of any controlled substance or marijuana during the performance of the 7874 contract.

7875 § 12. Use of brand names. -

7876 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or 7877 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be 7878 deemed to convey the general style, type, character, and quality of the article desired. Any article that 7879 the Institution in its sole discretion determines to be the equal of that specified, considering quality, 7880 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

7881 § 13. Comments concerning specifications. -

7882 The Institution shall establish procedures whereby comments concerning specifications or other 7883 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the 7884 time set for receipt of bids or proposals or award of the contract. 7885

§ 14. Prequalification generally; prequalification for construction. -

7886 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or 7887 construction, and consideration of bids or proposals limited to prequalified contractors. Any 7888 prequalification procedure shall be established in writing and sufficiently in advance of its 7889 implementation to allow potential contractors a fair opportunity to complete the process.

7890 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant 7891 to a prequalification process for construction projects adopted by the Institution. The process shall be 7892 consistent with the provisions of this section.

7893 The application form used in such process shall set forth the criteria upon which the qualifications of 7894 prospective contractors will be evaluated. The application form shall request of prospective contractors 7895 only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to 7896 request, by checking the appropriate box, that all information voluntarily submitted by the contractor 7897 7898 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the 7899 provisions of subsection D of § 34 of these Rules.

7900 In all instances in which the Institution requires prequalification of potential contractors for 7901 construction projects, advance notice shall be given of the deadline for the submission of 7902 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set 7903 for the submission of bids for such construction so as to allow the procedures set forth in this subsection 7904 to be accomplished.

7905 At least 30 days prior to the date established for submission of bids or proposals under the 7906 procurement of the contract for which the prequalification applies, the Institution shall advise in writing 7907 each contractor who submitted an application whether that contractor has been prequalified. In the event 7908 that a contractor is denied prequalification, the written notification to the contractor shall state the 7909 reasons for the denial of pregualification and the factual basis of such reasons.

7910 A decision by the Institution denying prequalification under the provisions of this subsection shall be 7911 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

7912 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the 7913 following:

7914 1. The contractor does not have sufficient financial ability to perform the contract that would result 7915 from such procurement. If a bond is required to ensure performance of a contract, evidence that the 7916 contractor can acquire a surety bond from a corporation included on the United States Treasury list of 7917 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to 7918 establish the financial ability of the contractor to perform the contract resulting from such procurement;

7919 2. The contractor does not have appropriate experience to perform the construction project in 7920 question;

7921 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or nongovernmental construction, 7922 7923 including, but not limited to, design-build or construction management;

7924 4. The contractor has been in substantial noncompliance with the terms and conditions of prior 7925 construction contracts with the Institution without good cause. If the Institution has not contracted with a 7926 contractor in any prior construction contracts, the Institution may deny pregualification if the contractor 7927 has been in substantial noncompliance with the terms and conditions of comparable construction 7928 contracts with another public body without good cause. The Institution may not utilize this provision to 7929 deny prequalification unless the facts underlying such substantial noncompliance were documented in 7930 writing in the prior construction project file and such information relating thereto given to the contractor 7931 at that time, with the opportunity to respond;

7932 5. The contractor or any officer, director, owner, project manager, procurement manager or chief 7933 financial official thereof has been convicted within the past 10 years of a crime related to governmental 7934 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 7935 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental 7936 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 7937 substantially similar law of the United States or another state:

7938 The contractor or any officer, director or owner thereof is currently debarred pursuant to an 7939 established debarment procedure from bidding or contracting by any public body, agency of another 7940 state or agency of the federal government; and

7941 7. The contractor failed to provide to the Institution in a timely manner any information requested 7942 by the Institution relevant to subdivisions 1 through 6 of this subsection.

7943 § 15. Negotiation with lowest responsible bidder. -

7944 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as 7945 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the 7946 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. 7947 However, the negotiation may be undertaken only under conditions and procedures described in writing

7948 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein. 7949

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

7950 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or 7951 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 7952 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 7953 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 7954 particular responsive and responsible bidder or offeror. 7955

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. -

7957 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance 7958 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be 7959 excluded from presenting an insurance bid proposal to the Institution in response to a request for 7960 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a 7961 prospective insurer pursuant to § 18. 7962

§ 18. Debarment. -

7963 Prospective contractors may be debarred from contracting for particular types of supplies, services, 7964 insurance or construction, for specified periods of time. Any debarment procedure shall be established in 7965 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a 7966 contractor's unsatisfactory performance for the Institution. 7967

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

7968 A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 7969 7970 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

7971 The Department of Environmental Quality, with advice from the Virginia Recycling Markets В. 7972 Development Council, shall advise the Institution concerning the designation of recycled goods. 7973

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

7974 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or 7975 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 7976 decided by lot.

7977 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 7978 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 7979 lowest responsive and responsible bidder who is a resident of Virginia.

7980 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where 7981 goods are being offered, and existing price preferences have already been taken into account, preference 7982 shall be given to the bidder whose goods contain the greatest amount of recycled content. 7983

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

7984 In determining the award of any contract for coal to be purchased for use in the Institution with state 7985 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest 7986 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more 7987 than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined 7988 elsewhere. 7989

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

7990 In determining the award of any contract for paper and paper products to be purchased for use A 7991 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable 7992 for the purpose intended, so long as the price is not more than 10% greater than the price of the low 7993 responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

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7994 B. For purposes of this section, recycled paper and paper products means any paper or paper 7995 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247. 7996

§ 23. Withdrawal of bid due to error. -

7997 A. A bidder for a public construction contract, other than a contract for construction or maintenance 7998 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 7999 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 8000 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 8001 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made 8002 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can 8003 be clearly shown by objective evidence drawn from inspection of original work papers, documents and 8004 materials used in the preparation of the bid sought to be withdrawn.

8005 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the 8006 8007 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 8008 work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the 8009 8010 preparation of the bid sought to be withdrawn.

8011 One of the following procedures for withdrawal of a bid shall be selected by the Institution and 8012 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 8013 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 8014 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or 8015 designated official his original work papers, documents and materials used in the preparation of the bid 8016 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 8017 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 8018 instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 8019 8020 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 8021 shall have two hours after the opening of bids within which to claim in writing any mistake as defined 8022 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 8023 period has elapsed. The mistake shall be proved only from the original work papers, documents and 8024 materials delivered as required herein.

8025 B. The Institution may establish procedures for the withdrawal of bids for other than construction 8026 contracts.

8027 C. No bid shall be withdrawn under this section when the result would be the awarding of the 8028 contract on another bid of the same bidder or of another bidder in which the ownership of the 8029 withdrawing bidder is more than 5%.

8030 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed 8031 to be the low bid.

8032 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the 8033 8034 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for 8035 which the withdrawn bid was submitted.

8036 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 8037 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid 8038 price, provided such bidder is a responsible and responsive bidder.

8039 § 24. Contract Pricing Arrangements. -

8040 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 8041 basis that is not prohibited by these Rules.

8042 B. Except in case of emergency affecting the public health, safety or welfare, no public contract 8043 shall be awarded on the basis of cost plus a percentage of cost.

8044 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis 8045 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole 8046 or part as a percentage of such claims, shall not be prohibited by this section. 8047

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

8048 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has 8049 obtained, and continues to maintain for the duration of the work, workers' compensation coverage 8050 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 8051 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 8052 evidence of such coverage.

8053 B. The Department of General Services shall provide the form to the Institution. Failure of the 8054 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 8055 of subsection A.

8056 C. No subcontractor shall perform any work on a construction project of the Institution unless he 8057 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage 8058 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 8059 Virginia. 8060

§ 26. Retainage on construction contracts. -

8061 A. In any contract issued by the Institution for construction that provides for progress payments in 8062 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% 8063 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful 8064 performance of the contract. All amounts withheld may be included in the final payment.

8065 B. Any subcontract for a public project that provides for similar progress payments shall be subject 8066 to the provisions of this section.

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

A. Any provision contained in any public construction contract of the Institution that purports to 8069 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable 8070 8071 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the 8072 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to 8073 causes within their control shall be void and unenforceable as against public policy.

8074 Subsection A shall not be construed to render void any provision of a public construction Β. 8075 contract awarded by the Institution that:

8076 Allows the recovery of that portion of delay costs caused by the acts or omissions of the 1. 8077 contractor, or its subcontractors, agents or employees;

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

8079 3. Provides for liquidated damages for delay; or 8080

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

8081 A contractor making a claim against the Institution for costs or damages due to the alleged C. 8082 delaying of the contractor in the performance of its work under any public construction contract of the 8083 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the 8084 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage 8085 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation 8086 or arbitration to be false or to have no basis in law or in fact.

8087 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 8088 the contractor in the performance of work under any public construction contract for the Institution, it 8089 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 8090 8091 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 8092 determined through litigation or arbitration to have been made in bad faith. 8093

§ 28. Bid bonds. -

8094 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 8095 million shall be accompanied by a bid bond from a surety company selected by the bidder that is 8096 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will 8097 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 8098 5% of the amount bid.

8099 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for 8100 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

8101 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 8102 or proposals for construction contracts anticipated to be less than \$1 million. 8103

§ 29. Performance and payment bonds. -

8104 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million 8105 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to 8106 any prime contractor requiring the performance of labor or the furnishing of materials for buildings, 8107 structures or other improvements to real property owned by the Institution, the contractor shall furnish to 8108 the Institution the following bonds:

8109 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 8110 conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a 8111 form and amount satisfactory to the Institution. 8112

8113 A payment bond in the sum of the contract amount. The bond shall be for the protection of 2. 8114 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the 8115 8116 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied

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8117 or performed in the furtherance of the work.

8118 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but8119 only for periods when the equipment rented is actually used at the site.

8120 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 8121 that are authorized to do business in Virginia.

8122 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

8123 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

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

8126 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish
8127 a payment bond with surety thereon in the sum of the full amount of the contract with such
8128 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are
8129 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the
8130 work provided for in the subcontract.

8131 § 30. Alternative forms of security. -

8132 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash8133 escrow in the face amount required for the bond.

8134 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the
8135 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain
8136 designated funds in the face amount required for the bid, payment or performance bond. Approval shall
8137 be granted only upon a determination that the alternative form of security proffered affords protection to
8138 the Institution equivalent to a corporate surety's bond.

8139 § 31. Bonds on other than construction contracts. -

8140 The Institution may require bid, payment, or performance bonds for contracts for goods or services if8141 provided in the Invitation to Bid or Request for Proposal.

8142 § 32. Action on performance bond. -

8143 No action against the surety on a performance bond shall be brought by the Institution unless
8144 brought within one year after (i) completion of the contract, including the expiration of all warranties
8145 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

8146 § 33. Actions on payment bonds; waiver of right to sue. -

8147 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished
8148 material in accordance with the contract documents in furtherance of the work provided in any contract
8149 for which a payment bond has been given, and who has not been paid in full before the expiration of 90
8150 days after the day on which the claimant performed the last of the labor or furnished the last of the
8151 materials for which he claims payment, may bring an action on the payment bond to recover any
8152 amount due him for the labor or material. The obligee named in the bond need not be named a party to
8153 the action.

8154 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 8155 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on 8156 8157 which the claimant performed the last of the labor or furnished the last of the materials for which he 8158 claims payment, stating with substantial accuracy the amount claimed and the name of the person for 8159 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be 8160 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at 8161 any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the 8162 8163 time limitations stated in this subsection.

8164 C. Any action on a payment bond shall be brought within one year after the day on which the 8165 person bringing such action last performed labor or last furnished or supplied materials.

8166 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless8167 it is in writing, signed by the person whose right is waived, and executed after such person has8168 performed labor or furnished material in accordance with the contract documents.

8169 § 34. Public inspection of certain records. -

8170 A. Except as provided in this section, all proceedings, records, contracts and other public records
8171 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
8172 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

8174 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 8175 shall not be open to public inspection.

8176 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 8177 bid records within a reasonable time after the opening of all bids but prior to award, except in the event

8178 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid 8179 records shall be open to public inspection only after award of the contract.

8180 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect 8181 proposal records within a reasonable time after the evaluation and negotiations of proposals are 8182 completed but prior to award, except in the event that the Institution decides not to accept any of the 8183 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection 8184 only after award of the contract.

8185 E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. 8186

8187 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection 8188 with a procurement transaction or pregualification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the 8189 8190 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission 8191 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the 8192 reasons why protection is necessary. 8193

§ 35. Exemption for certain transactions. -

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

8195 1. The selection of services related to the management and investment of the Institution's endowment 8196 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be 8197 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by 8198 § 23-76.1.

8199 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the 8200 Institution. However, such purchase procedures shall provide for competition where practicable.

8201 3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is 8202 8203 obligated to conform to procurement procedures that are established by federal statutes or regulations, 8204 whether or not those federal procedures are in conformance with the provisions of these Rules. 8205

4. The University of Virginia Medical Center.

8206 The purchase of goods and services by the Institution when such purchases are made under a 5 8207 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

8208 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 8209 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 8210 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 8211 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 8212 of the Institution's President or his designee that acceptance of the grant or contract funds under the 8213 applicable conditions is in the public interest. Such determination shall state the specific provision of 8214 these Rules in conflict with the conditions of the grant or contract. 8215

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

8216 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as 8217 any other nongovernmental source without impairing the religious character of such organization, and 8218 8219 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

8220 B. For the purposes of this section, "faith-based organization" means a religious organization that is 8221 or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 8222 8223 104-193.

8224 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this 8225 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 8226 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 8227 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of 8228 religious freedom by the recipients of such goods, services, or disbursements.

8229 The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and D. 8230 purchase orders prominently display a nondiscrimination statement indicating that it does not 8231 discriminate against faith-based organizations.

8232 A faith-based organization contracting with the Institution (i) shall not discriminate against any E. 8233 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 8234 8235 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other 8236 organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) 8237 8238 8239 shall be construed to supercedesupersede or otherwise override any other applicable state law.

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8240 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8241 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent 8242 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to 8243 expenditures pursuant to contracts, if any, for the services of chaplains.

8244 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization 8245 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based 8246 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of 8247 a particular religion.

8248 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 8249 to a contract between the Institution and a faith-based organization, objects to the religious character of 8250 the faith-based organization from which the individual receives or would receive the goods, services, or 8251 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 8252 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

8253 The Institution shall provide to each individual who applies for or receives goods, services, or 8254 disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in **bold** face type that states: "Neither the Institution's selection of a charitable or faith-based 8255 8256 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 8257 charitable or religious character, practices, or expression. No provider of services may discriminate 8258 against you on the basis of religion, a religious belief, or your refusal to actively participate in a 8259 religious practice. If you object to a particular provider because of its religious character, you may 8260 request assignment to a different provider. If you believe that your rights have been violated, please 8261 discuss the complaint with your provider or notify the appropriate person as indicated in this form. 8262

§ 37. Exemptions from competition for certain transactions. -

8263 The Institution may enter into contracts without competition, as that term is described in subsections 8264 A through J of § 5 (Methods of procurement) of these Rules, for: 8265

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

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 8266 8267 Blind and Vision Impaired;

8268 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported 8269 employment services serving the handicapped;

- 8270 c. Private educational institutions; or
- 8271 d. Other public educational institutions.
- 8272 2. Speakers and performing artists:
- 8273 3. Memberships and Association dues;

8274 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 8275 goods or services by the Institution;

- 8276 5. Group travel in foreign countries;
- 8277 6. Conference facilities and services;

8278 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, 8279 registration and tournament fees;

8280 8. Royalties; or

8281 The purchase of legal services, provided that the Office of the Attorney General has been 9 8282 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

8283 10. Maintenance contract renewals for scientific research equipment and software, provided that the 8284 institution has posted the renewal to eVa and documented that there was only one response or less and 8285 such documentation includes a statement signed by the buyer indicating that no firm other than the 8286 original manufacturer/developer offers the service.

8287 Exemptions from competitive sealed bidding and competitive negotiation for certain § 38. 8288 transactions; limitations. -

8289 The Institution may enter into contracts for insurance or electric utility service without competitive 8290 sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and 8291 8292 welfare of and developing close relationships with similar public bodies, provided such association has 8293 procured the insurance or electric utility services by use of competitive principles and provided that the 8294 Institution has made a determination in advance after reasonable notice to the public and set forth in 8295 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the 8296 public. The writing shall document the basis for this determination.

8297 § 39. Definitions. -

- 8298 As used in §§ 39 through 46, unless the context requires a different meaning:
- 8299 "Contractor" means the entity that has a direct contract with the Institution.
- "Debtor" means any individual, business, or group having a delinquent debt or account with any state 8300

8301 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

8302 "Payment date" means either (i) the date on which payment is due under the terms of a contract for 8303 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after 8304 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or 8305 services by the Institution.

8306 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to 8307 whom the contract was awarded or to any subcontractor in the performance of the work provided for in 8308 such contract. 8309

§ 40. Exemptions. -

8310 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any 8311 public utility tariffs prescribed by the State Corporation Commission.

8312 § 41. Retainage to remain valid. -

8313 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall 8314 remain valid. 8315

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

8316 A. The Institution shall promptly pay for the completely delivered goods or services by the required 8317 payment date.

Payment shall be deemed to have been made when offset proceedings have been instituted, as 8318 8319 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

8320 Separate payment dates may be specified for contracts under which goods or services are B 8321 provided in a series of partial deliveries or executions to the extent that such contract provides for 8322 separate payment for such partial delivery or execution. 8323

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

In instances where there is a defect or impropriety in an invoice or in the goods or services received, 8324 8325 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would 8326 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the 8327 invoice or the goods or services.

8328 § 44. Date of postmark deemed to be date payment is made. -

8329 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date 8330 payment is made for purposes of these Rules. 8331

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

Any contract awarded by the Institution shall include:

8333 1. A payment clause that obligates the contractor to take one of the two following actions within 8334 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the 8335 subcontractor under that contract:

8336 Pay the subcontractor for the proportionate share of the total payment received from the a. 8337 Institution attributable to the work performed by the subcontractor under that contract; or

8338 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the 8339 subcontractor's payment with the reason for nonpayment.

8340 2. A payment clause that requires (i) individual contractors to provide their social security numbers 8341 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 8342 numbers.

8343 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts 8344 owed by the contractor that remain unpaid after seven days following receipt by the contractor of 8345 payment from the Institution for work performed by the subcontractor under that contract, except for 8346 amounts withheld as allowed in subdivision 1.

8347 An interest rate clause stating, "Unless otherwise provided under the terms of this contract, 4. interest shall accrue at the rate of 1% per month.' 8348

8349 Any such contract awarded shall further require the contractor to include in each of its subcontracts a 8350 provision requiring each subcontractor to include or otherwise be subject to the same payment and 8351 interest requirements with respect to each lower-tier subcontractor.

8352 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause 8353 in this section shall not be construed to be an obligation of the Institution. A contract modification shall 8354 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement 8355 claim shall not include any amount for reimbursement for the interest charge. 8356

§ 46. Interest penalty; exceptions. -

8357 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the 8358 Institution to a vendor that remain unpaid after seven days following the payment date. However, 8359 nothing in this section shall affect any contract providing for a different rate of interest, or for the 8360 payment of interest in a different manner.

8361 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on 8362 corporate loans (prime rate) at large United States money center commercial banks as reported daily in

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the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of 8363 8364 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 8365 interest established pursuant to § 58.1-1812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 8366 8367 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 8368 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 8369 exception from the interest penalty provided by this subsection shall apply only to that portion of a 8370 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 8371 the disagreement.

8372 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 8373 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 8374 contractor from receiving interest on such funds under an approved escrow agreement.

8375 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 8376 8377 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the 8378 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 8379 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 8380 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days 8381 following the payment date. 8382

§ 47. Ineligibility. -

8383 Any bidder, offeror or contractor refused permission to participate, or disgualified from A. participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 8384 8385 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the 8386 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 8387 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 8388 requested by the bidder within five business days after receipt of the notice.

Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or 8389 8390 8391 ineligibility based on all information in the possession of the Institution, including any rebuttal 8392 information, within five business days of the date the Institution received such rebuttal information.

8393 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 8394 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 8395 evaluation reveals that the bidder should be refused permission to participate, or disqualified from 8396 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The 8397 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 8398 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 8399 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 8400 in § 54.

8401 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 8402 8403 restoration of eligibility.

8404 § 48. Appeal of denial of withdrawal of bid. -

8405 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final 8406 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 8407 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 8408 instituting legal action as provided in § 54.

8409 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, 8410 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 8411 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released 8412 only upon a final determination that the bidder was entitled to withdraw the bid.

8413 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 8414 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 8415 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to 8416 Bid, the sole relief shall be withdrawal of the bid.

8417 § 49. Determination of nonresponsibility. -

8418 Following public opening and announcement of bids received on an Invitation to Bid, the Α. 8419 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed 8420 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent 8421 low bidder is responsible. If the Institution so determines, then it may proceed with an award in 8422 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution 8423 determines that the apparent low bidder is not responsible, it shall proceed as follows:

8424 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 8425 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 8426 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that 8427 relate to the determination, if so requested by the bidder within five business days after receipt of the 8428 notice.

8429 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 8430 challenging the evaluation. The Institution shall issue its written determination of responsibility based 8431 on all information in the possession of the Institution, including any rebuttal information, within five 8432 business days of the date the Institution received the rebuttal information. At the same time, the 8433 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

8434 3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures 8435 8436 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 8437 as provided in § 54.

8438 The provisions of this subsection shall not apply to procurements involving the prequalification of 8439 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such 8440 bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the 8441 8442 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in 8443 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or 8444 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the 8445 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or 8446 directed award as provided in subsection A of § 54, or both.

8447 If it is determined that the decision of the Institution was not an honest exercise of discretion, but 8448 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state 8449 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has 8450 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

8451 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract 8452 shall proceed under this section, and may not protest the award or proposed award under the provisions 8453 of § 50 of these Rules.

8454 D. Nothing contained in this section shall be construed to require the Institution, when procuring by 8455 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 8456 to be the most advantageous. 8457

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

8458 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 8459 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 8460 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 8461 notice of the award or the announcement of the decision to award shall be given by the Institution in 8462 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 8463 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 8464 protest the award or decision to award such contract shall submit the protest in the same manner no 8465 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 8466 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject 8467 8468 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 8469 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or 8470 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest 8471 8472 and the relief sought. The Institution or designated official shall issue a decision in writing within 10 8473 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 8474 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting 8475 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as 8476 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. 8477 The use of 8478 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 8479 standards of § 55 of these Rules.

8480 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it 8481 to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or 8482 capricious, then the sole relief shall be as hereinafter provided. 8483

8484 Where the award has been made but performance has not begun, the performance of the contract 8485 may be enjoined. Where the award has been made and performance has begun, the Institution may

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8486 declare the contract void upon a finding that this action is in the best interest of the public. Where a 8487 contract is declared void, the performing contractor shall be compensated for the cost of performance up 8488 to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

8489 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing 8490 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to 8491 award was based on fraud or corruption or on an act in violation of these Rules, the Institution, 8492 designated official or appeals board may enjoin the award of the contract to a particular bidder.

8493 § 51. Effect of appeal upon contract. -

8494 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in 8495 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has 8496 been filed.

8497 § 52. Stay of award during protest. -

8498 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event 8499 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided 8500 in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would 8501 8502 expire. 8503

§ 53. Contractual disputes. -

8504 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 8505 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be 8506 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing 8507 herein shall preclude a contract from requiring submission of an invoice for final payment within a 8508 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of 8509 claims shall not delay payment of amounts agreed due in the final payment.

8510 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 8511 Such procedure, which may be contained in the contract or may be specifically incorporated into the 8512 contract by reference and made available to the contractor, shall establish a time limit for a final 8513 decision in writing by the Institution. If the Institution has established administrative procedures meeting 8514 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically 8515 incorporated in the contract by reference and made available to the contractor. The Institution may 8516 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 8517 (ADR) as an administrative procedure.

8518 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these 8519 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's 8520 decision on the claim, unless the Institution fails to render such decision within the time specified in the 8521 contract.

8522 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within 8523 six months of the date of the final decision on the claim by the Institution by invoking administrative 8524 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting 8525 legal action as provided in § 54. 8526

§ 54. Legal actions. -

8527 A bidder or offeror, actual or prospective, who is refused permission or disqualified from A. 8528 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 8529 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that 8530 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of 8531 8532 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in 8533 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in 8534 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously 8535 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a 8536 responsible bidder, the court may direct the Institution to award the contract to such bidder in 8537 accordance with the requirements of this section and the Invitation to Bid.

8538 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the 8539 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes 8540 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary 8541 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, 8542 or the terms or conditions of the Invitation to Bid.

8543 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole 8544 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or 8545 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit 8546 court challenging a proposed award or the award of a contract, which shall be reversed only if the

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8547 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but 8548 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state 8549 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

8550 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 8551 of reasonable security to protect the Institution.

A contractor may bring an action involving a contract dispute with the Institution in the 8552 E. 8553 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of 8554 8555 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of 8556 Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of 8557 8558 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, 8559 the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise. 8560

8561 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a 8562 contractor.

§ 55. Administrative appeals procedure. -

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 8564 8565 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 8566 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 8567 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 8568 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a 8569 written decision containing findings of fact. The disinterested person or panel shall not be an employee 8570 of the governmental entity against whom the claim has been filed. The findings of fact shall be final 8571 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) 8572 8573 so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these 8574 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a 8575 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution 8576 8577 Council in establishing an Alternative Dispute Resolution (ADR) procedure.

8578 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 8579 judicial review if such action is brought within 30 days of receipt of the written decision. 8580

§ 56. Alternative dispute resolution. -

8581 The Institution may enter into agreements to submit disputes arising from contracts entered into 8582 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution 8583 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of 8584 Virginia, as applicable. 8585

§ 57. Ethics in public contracting. -

The Institution and its governing body, officers and employees shall be governed by the Ethics in 8586 8587 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia. 8588 ---FYHIRIT I 8589

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8591	MANAGEMENT AGREEMENT
8592	BETWEEN
8593	THE COMMONWEALTH OF VIRGINIA
8594	AND
8595	THE COLLEGE OF WILLIAM AND MARY
8596	PURSUANT TO
8597	THE RESTRUCTURED HIGHER EDUCATION
8598	FINANCIAL AND ADMINISTRATIVE OPERATIONS
8599	ACT OF 2005
8600	
8601	POLICY GOVERNING
8602	FINANCIAL OPERATIONS AND MANAGEMENT
8603	
8604	THE RECTOR AND BOARD OF VISITORS
8605	OF THE COLLEGE OF WILLIAM AND MARY
8606	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
8607	I. PREAMBLE.
8608	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter

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4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting 8609 8610 additional authority to institutions of higher education for financial operations and management, subject 8611 to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth. 8612

8613 The following provisions of this Policy constitute the adopted Board of Visitors policies regarding 8614 the College of William and Mary's financial operations and management.

8615 This Policy is intended to cover the authority that may be granted to the College pursuant to 8616 Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the 8617 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act 8618 and the College's Enabling Legislation, are not affected by this Policy.

8619 II. DEFINITIONS.

8620 As used in this policy, the following terms shall have the following meanings, unless the context 8621 requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, 8622 8623 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

8624 Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William 8625 and Mary and the Virginia Institute of Marine Science.

8626 "College" means the College of William and Mary (State Agency 204) and the Virginia Institute of 8627 Marine Science (State Agency 268).

8628 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with 8629 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has 8630 entered into a Management Agreement with the Commonwealth to be governed by the provisions of 8631 Subchapter 3 of the Act.

8632 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of 8633 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions 8634 of the College.

8635 "Effective Date" means the effective date of the initial Management Agreement between the College 8636 and the Commonwealth.

8637 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act 8638 between the College and the Commonwealth of Virginia.

8639 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 8640 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 8641 general government funds, as defined in the December 20, 2004 Report to the Governor and General 8642 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time. 8643 III. SCOPE OF POLICY.

8644 This Policy applies to the College's responsibility for management, investment and stewardship of all 8645 its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, 8646 8647 and internal controls adequate to protect and account for the College's financial resources.

8648 The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it 8649 is implemented by the College on behalf of the Institute, but the Institute shall not receive any 8650 additional independent financial operations and management authority as a result of this Management 8651 Agreement beyond the independent financial operations and management authority that it had prior to 8652 the Effective Date of the College's initial Management Agreement with the Commonwealth or that it may be granted by law in the future. 8653 8654

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

8655 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 8656 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 8657 8658 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 8659 the duties and responsibilities set forth in this Policy to a person or persons within the College, who, 8660 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 8661 implementation of those duties and responsibilities pursuant to the College's usual delegation policies 8662 and procedures. 8663

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

8664 The President, or designee, shall continue to be authorized by the Board to maintain existing and 8665 implement new policies governing the management of College financial resources. These policies shall 8666 continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency 8667 with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the 8668 8669 College and the allocation and utilization of resources within the accounting system, including the

8670 relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with 8671 regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide 8672 adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the College pursuant to a general fund appropriation, and ensure 8673 compliance with the requirements of the Appropriation Act. 8674

8675 The financial management system shall continue to include a financial reporting system to satisfy 8676 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 8677 as specified in the related State Comptroller's Directives, and the College's separately audited financial 8678 statements. To ensure observance of limitations and restrictions placed on the use of the resources 8679 available to the College, the accounting and bookkeeping system of the College shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the 8680 8681 Governmental Accounting Standards Board.

8682 In addition, the financial management system shall continue to provide financial reporting for the 8683 President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the 8684 financial operations of the College. Upon the Effective Date of the initial Management Agreement 8685 between the College and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the College shall not be required to record its financial 8686 transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the 8687 8688 current monthly interfacing with CARS, or be a part of any subsequent Commonwealth financial 8689 systems that replace CARS or are in addition to CARS, but shall have its own financial reporting 8690 system. The College's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and 8691 Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the 8692 State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on 8693 8694 Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be 8695 8696 requested by the requesting State agency, and (ii) such other special reports as may be requested from 8697 time to time. 8698

VI. FINANCIAL MANAGEMENT POLICIES.

8699 The President, or designee, shall create and implement any and all financial management policies 8700 necessary to establish a financial management system with adequate risk management and internal 8701 control processes and procedures for the effective protection and management of all College financial 8702 resources. Such policies will not address the underlying accounting principles and policies employed by 8703 the Commonwealth and the College, but rather will focus on the internal operations of the College's 8704 financial management. These policies shall include, but need not be limited to, the development of a 8705 tailored set of finance and accounting practices that seek to support the College's specific business and 8706 administrative operating environment in order to improve the efficiency and effectiveness of its business 8707 and administrative functions. In general, the system of independent financial management policies shall 8708 be guided by the general principles contained in the Commonwealth's Accounting Policies and 8709 Procedures such as establishing strong risk management and internal accounting controls to ensure 8710 College financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the 8711 8712 performance of College programs.

8713 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's accounting policies until such time as specific alternate 8714 policies can be developed, approved and implemented. Such alternate policies shall include applicable 8715 8716 accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the College. 8717 8718

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

8719 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the 8720 College shall have the power and authority to manage all monies received by it. All State general funds 8721 to be allocated to the College shall remain subject to the appropriations process.

8722 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher 8723 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 8724 Assembly the degree to which each public institution of higher education of the Commonwealth has met 8725 the financial and administrative management and educational-related performance benchmarks called for 8726 by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 8727 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year 8728 8729 for which the financial and administrative management and educational-related performance benchmarks 8730 described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal 8731 years thereafter, each public institution of higher education of the Commonwealth that (i) has been

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8732 certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and
8733 (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain financial
8734 incentives, including interest on the tuition and fees and other non-general fund Education and General
8735 Revenues deposited into the State Treasury by the public institution of higher education.

8736 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
8737 which it has received such certification from SCHEV, the College is authorized to hold and invest
8738 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise
8739 funds, and all other non-general fund revenues subject to the following requirements:

i) The College shall deposit such funds in the State Treasury pursuant to the State process in placeat the time of such deposit;

8742 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section8743 IX below;

8744 iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold 8745 in escrow all interest earned on the College's tuition and fees and other non-general fund Educational 8746 and General Revenues. Interest earned on the escrow account shall be deposited to the account. Upon 8747 receipt of the required State Council of Higher Education for Virginia certification that the College has 8748 met such institutional performance benchmarks and the conditions prescribed in subsection B of 8749 § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable 8750 no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the 8751 escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the 8752 College may expend the funds for purposes related to its mission. If public institutions of higher 8753 education of the Commonwealth are permitted, or the College in particular is permitted, by the 8754 Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned 8755 on sponsored programs and research funds, then this paragraph shall not apply to such interest on such 8756 funds, and such interest shall not be held in escrow.

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

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

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

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

8772 The College also shall have sum sufficient appropriation authority for all non-general funds as 8773 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 8774 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 8775 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 8776 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be 8777 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 8778 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the 8779 Department of Planning and Budget by July 31 of the subsequent fiscal year.

8780 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 8781 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 8782 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the 8783 intent of the Commonwealth and the College that the College shall be exempt from the revenue 8784 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, 8785 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the 8786 College that the College shall be entitled to retain non-general fund savings generated from changes in 8787 Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, 8788 retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such 8789 savings back to the Commonwealth. This financial resource policy assists the College by providing the 8790 framework for retaining and managing non-general funds, for the receipt of general funds, and for the 8791 use and stewardship of all these funds.

8792 The President, or designee, shall continue to provide oversight of the College's cash management

8793 system which is the framework for the retention of non-general funds. The Internal Audit Department of 8794 the College shall periodically audit the College's cash management system in accordance with 8795 appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. 8796 Additional oversight shall continue to be provided through the annual audit and assessment of internal

8797 controls performed by the Auditor of Public Accounts.

For the receipt of general and non-general funds, the College shall conform to the Security for Public 8798 8799 Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia, as it currently exists 8800 and from time to time may be amended. 8801

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

8802 The President, or designee, shall continue to be authorized to create and implement any and all 8803 Accounts Receivable Management and Collection policies as part of a system for the management of College financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the College shall take 8804 8805 8806 all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

8807 These shall include, but not be limited to, establishing the criteria for granting credit to College 8808 customers; establishing the nature and timing of collection procedures within the above general 8809 principles; and the independent authority to select and contract with collection agencies and, after 8810 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 8811 collection activities for all College accounts receivable such as reporting delinquent accounts to credit 8812 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 8813 accordance with sound collection activities, the College shall continue to utilize the Commonwealth's 8814 Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax 8815 Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting 8816 8817 procedures established pursuant to the Virginia Debt Collection Act.

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IX. DISBURSEMENT MANAGEMENT.

8819 The President, or designee, shall continue to be authorized to create and implement any and all 8820 disbursement policies as part of a system for the management of College financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all 8821 8822 funds, from whatever source derived, in the execution of the College's operations. These policies also 8823 shall continue to address the timing of appropriate and reasonable disbursements consistent with the 8824 Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's 8825 mission, including travel-related disbursements. Further, the College's disbursement policy shall continue 8826 to provide for the mechanisms by which payments are made including the use of charge cards, warrants, 8827 and electronic payments. Since the College no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the College shall establish its own mechanisms for 8828 8829 electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and 8830 payments to the Commonwealth's Debt Set Off Collection Programs.

8831 Beginning with the fiscal year after the first fiscal year for which it first receives the required 8832 certification from SCHEV, the College may draw down its general fund appropriations (subject to 8833 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. 8834 Such funds shall be available to the College for disbursement as provided in the then-current rules of the

8835 Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance 8836 with the following schedule:

8837 i) The College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for 8838 Educational and General programs on or about the first and fifteenth days of each month with 8839 adjustments as needed to meet short-term cash requirements associated with the Commonwealth's 8840 bimonthly pay dates, and up to 50% of its annual general fund appropriation for Student Financial 8841 Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after 8842 February 1 of each year in order to meet student obligations;

8843 ii) The College may draw down the sum of all tuition and E&G fees and all other non-general 8844 revenues deposited to the State Treasury each day on the same business day they were deposited; and

8845 iii) The College anticipates that expenditures could exceed available revenues from time to time 8846 during the year if the above disbursement schedule is used. When the College projects a cost deficit in 8847 activities supported by general fund appropriations, the College may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a 8848 8849 form and within a timeframe agreeable to the parties, in order to cover expenditures.

8850 These disbursement policies shall authorize the President, or designee, to independently select, 8851 engage, and contract for such consultants, accountants, and financial experts, and other such providers of 8852 expert advice and consultation, and, after consultation with the Office of the Attorney General, private 8853 attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to 8854 include the ability to locally manage and administer the Commonwealth's credit card and cost recovery

8855 programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts 8856 governing those programs, provided that the College shall submit the credit card and cost recovery 8857 aspects of its financial and operations policies to the State Comptroller for review and comment prior to 8858 implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk 8859 management and internal control procedures shall be maintained over previously decentralized processes 8860 for public records, payroll, and non-payroll disbursements. The College shall continue to provide 8861 summary quarterly prompt payment reports to the Department of Accounts in accordance with the 8862 reporting procedures established pursuant to the Prompt Payment Act.

8863 The College's disbursement policies shall be guided by the principles of the Commonwealth's policies 8864 as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date 8865 of its initial Management Agreement with the Commonwealth, the College shall continue to follow the 8866 Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for 8867 8868 review and comment prior to their implementation by the College.

8869 X. DEBT MANAGEMENT.

8870 The President, or designee, shall continue to be authorized to create and implement any and all debt 8871 management policies as part of a system for the management of College financial resources.

8872 Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or 8873 other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, 8874 and that are consistent with debt capacity and management policies and guidelines established by its 8875 Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, 8876 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided 8877 8878 that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 8879 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised 8880 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 8881 comment prior to its adoption by the College.

8882 The College recognizes that there are numerous types of financing structures and funding sources 8883 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 8884 the President, or designee, within the context of the overall portfolio to ensure that any financial product 8885 or structure is consistent with the College's objectives. Regardless of the financing structure(s) utilized, 8886 the President, or designee, shall obtain sufficient documentation to gain a full understanding of the 8887 transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the 8888 impact on College creditworthiness and debt capacity. All such debt or financial products issued 8889 pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act, shall be authorized by resolution 8890 of the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

8891 The College will establish guidelines relating to the total permissible amount of outstanding debt by 8892 monitoring College-wide ratios that measure debt compared to College balance-sheet resources and 8893 annual debt service burden. These measures will be monitored and reviewed regularly in light of the 8894 College's current strategic initiatives and expected debt requirements. The Board of Visitors shall 8895 periodically review and approve the College's debt capacity and debt management guidelines. Any 8896 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to 8897 their adoption by the College. 8898

XI. INVESTMENT POLICY.

8899 It is the policy of the College to invest its operating and reserve funds solely in the interest of the 8900 College and in a manner that will provide the highest investment return with the maximum security 8901 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act 8902 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence 8903 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and 8904 familiar with such matters would use in the conduct of an enterprise of a like character and with like 8905 aims.

Endowment investments shall be invested and managed in accordance with the Uniform Management 8906 8907 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

8908 The Board of Visitors shall periodically review and approve the investment guidelines governing the 8909 College's operating and reserve funds.

8910 XÍI. INSURANCE AND RISK MANAGEMENT.

8911 By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any 8912 intent during the next biennium to withdraw from any insurance or risk management program made 8913 available to the College through the Commonwealth's Division of Risk Management and in which the 8914 College is then participating, to enable the Commonwealth to complete an adverse selection analysis of 8915 any such decision and to determine the additional costs to the Commonwealth that would result from

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8916 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College 8917 proceeds to withdraw from the insurance or risk management program, the College shall reimburse the 8918 Commonwealth for all such additional costs attributable to such withdrawal, as determined by the 8919 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and 8920 the Commonwealth.

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 8921 8922 30, 20102012, provided that on or before November 15, 2011, the Governor provides to the Chairmen 8923 of the House Committee on Appropriations and the Senate Committee on Finance written notification 8924 that this Management Agreement needs to be renegotiated or revised. If such notification is not 8925 received, this Management Agreement shall continue in effect until June 30, 2015. 8926 EXHIBIT M

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION

FINANCIAL AND ADMINISTRATIVE OPERATIONS **ACT OF 2005**

POLICY GOVERNING CAPITAL PROJECTS

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

8943 Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, 8944 respectively) delegated limited but significant autonomy to the University of Virginia to establish its own post-appropriation system for undertaking the implementation of non-general fund capital projects 8945 for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act, 8946 8947 delegated nearly identical limited autonomy to the University as a whole for non-general fund capital projects. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise 8948 8949 of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the Existing Policy 8950 Statement).

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 8951 8952 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the 8953 University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace 8954 8955 the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded 8956 entirely with non-general funds and without any proceeds from State Tax Supported Debt. 8957 The 8958 University's system for carrying out its capital outlay process as a Covered Institution is to be governed 8959 by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition 8960 8961 of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, 8962 Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted 8963 Board of Visitors policies regarding the University's capital projects, whether funded by a state general 8964 fund appropriation, State Tax Supported Debt, or funding from other sources.

8965 This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the 8966 8967 University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In 8968 particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed 8969 8970 those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy. 8971

II. DEFINITIONS.

8972 As used in this policy, the following terms shall have the following meanings, unless the context 8973 requires otherwise:

8974 'Academic Division" means that part of the University known as (State Agency 207).

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, 8975 8976 Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the University of Virginia. 8977

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- 8978 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting 8979 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.
- 8980 "Capital Professional Services" means professional engineering, architecture, land surveying and 8981 landscape architecture services related to capital projects.
- 8982 "Capital project(s)" means the acquisition of any interest in land, including improvements on the 8983 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital 8984 Leases.
- 8985 "College" means that part of the University operated as the University of Virginia's College at Wise, 8986 also known as (State Agency 246).
- 8987 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a 8988 public institution of higher education of the Commonwealth of Virginia that has entered into a 8989 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of 8990 the Act.
- 8991 'Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of 8992 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in 8993 8994 §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.
- 8995 "Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation 8996 Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.
- 8997 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on 8998 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing 8999 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.
- 9000 "Medical Center" means that part of the University consisting of the University of Virginia Medical 9001 Center (State Agency 209), and related health care and health maintenance facilities.
- "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9002 9003 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General 9004 9005 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.
- 9006 "University" means the University of Virginia, consisting of the Academic Division, the College, and 9007 the Medical Center. 9008
 - III. SCOPE OF POLICY.
- 9009 This Policy applies to the planning and budget development for capital projects, capital project 9010 authorization, and the implementation of capital projects, whether funded by a general fund 9011 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other 9012 sources.
- 9013 This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional 9014 Services and construction services, 4) design reviews and code approvals for capital projects, 5) 9015 environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) 9016 9017 building and land dispositions, 9) project management systems, and 10) reporting requirements.
- 9018 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
- 9019 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 9020 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 9021 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 9022 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 9023 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 9024 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 9025 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 9026 and procedures. 9027

V. CAPITAL PROGRAM.

- 9028 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a 9029 system for developing one or more capital project programs that defines or define the capital needs of 9030 the University for a given period of time consistent with the University's published Master Plan. This 9031 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of 9032 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be 9033 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from 9034 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board 9035 may approve amendments to the program for Major Capital Projects annually or more often if 9036 circumstances warrant.
- 9037 It shall be University policy that each capital project program shall meet the University's mission and 9038 institutional objectives, and be appropriately authorized by the University. Moreover, it shall be

9039 University policy that each capital project shall be of a size and scope to provide for the defined 9040 program needs, designed in accordance with all applicable building codes and handicapped accessibility 9041 standards as well as the University's design guidelines and standards, and costed to reflect current costs 9042 and escalated to the mid-point of anticipated construction.

9043 VI. AUTHORIZATION OF CAPITAL PROJECTS

9044 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its 9045 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief 9046 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other 9047 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund 9048 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 9049 Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests. 9050

9051 It shall be the policy of the University that the implementation of capital projects shall be carried out 9052 so that the capital project as completed is the capital project approved by the Board for Major Capital 9053 Projects and according to the procedures adopted by the President, acting through the Executive Vice 9054 President and Chief Operating Officer, for all other capital projects. The President, acting through the 9055 Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement.

9056 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond 9057 the plans and justifications that were the basis for the capital project's approval, either before or during 9058 construction, unless approved in advance as described above. Minor changes shall be permissible if they 9059 are determined by the President, acting through the Executive Vice President and Chief Operating 9060 Officer, to be justified.

9061 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must 9062 include a statement of urgency if not part of the approved Major Capital Project program.

9063 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 9064 SERVICES.

9065 It shall be the policy of the University that procurements shall result in the purchase of high quality 9066 services and construction at reasonable prices and shall be consistent with the Policy Governing the 9067 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials 9068 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and 9069 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed 9070 to:

9071 Seeking competition to the maximum practical degree, taking into account the size of the anticipated 9072 procurement, the term of the resulting contract and the likely extent of competition;

9073 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the 9074 appearance of any impropriety prohibited by State law or University policy;

9075 Making procurement rules clear in advance of any competition;

9076 Providing access to the University's business to all qualified vendors, firms and contractors, with no 9077 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in 9078 cooperative procurements and to meet special needs of the University;

9079 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against 9080 employees or applicants because of race, religion, color, sex, national origin, age, disability or other 9081 basis prohibited by State law except where there is a bona fide occupational qualification reasonably 9082 necessary to the contractor's normal operations; and

9083 Providing for a non-discriminatory procurement process, and including appropriate and lawful 9084 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small 9085 businesses and to promote and encourage a diversity of suppliers.

9086 The President, acting through the Executive Vice President and Chief Operating Officer, is authorized 9087 to develop implementing procedures for the procurement of Capital Professional Services and 9088 construction services at the University. The procedures shall implement this Policy and provide for:

9089 A system of competitive negotiation for Capital Professional Services, including a procedure for 9090 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, 9091 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of 9092 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act; 9093

A prequalification procedure for contractors or products;

9094 A procedure for special construction contracting methods, including but not limited to design-build 9095 and construction management contracts; and 9096

A prompt payment procedure.

9097 The University also may enter into cooperative arrangements with other private or public health or 9098 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, 9099 in the judgment of the University, the purposes of this Policy will be furthered.

VIII. DESIGN REVIEWS AND CODE APPROVALS. 9100

9101 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final 9102 Major Capital Project authorization based on the size, scope and cost estimate provided with the design. 9103 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be 9104 required. For all capital projects other than Major Capital Projects, the President, acting through the 9105 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and 9106 project authorization based on the size, scope and cost estimate provided with the design. It shall be the 9107 University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable 9108 9109 accessibility code.

9110 The President, acting through the Executive Vice President and Chief Operating Officer, shall 9111 designate a Building Official responsible for building code compliance by either (i) hiring an individual 9112 to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If 9113 9114 option (i) is selected, the individual hired as the University Building Official shall be a full-time 9115 employee, a registered professional architect or engineer, and certified by the Department of Housing 9116 and Community Development to perform this Building Official function. The University Building 9117 Official shall issue building permits for each capital project required by the VUSBC to have a building 9118 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building 9119 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, 9120 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital 9121 project and that such capital project has been inspected by the State Fire Marshal or his designee as 9122 required. When serving as the University Building Official, such individual shall organizationally report 9123 directly and exclusively to the Board of Visitors. If the University hires its own University Building 9124 Official, it shall fulfill the code review requirement by maintaining a review unit of licensed professional 9125 architects or engineers supported by resources and staff who are certified by the Department of Housing 9126 and Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose 9127 and who shall review plans, specifications and documents for compliance with building codes and 9128 standards and perform required inspections of work in progress and the completed capital project. No 9129 individual licensed professional architect or engineer hired under the University's personnel system as a 9130 member of the review unit or contracted with to perform these functions shall also perform other 9131 building code-related design, construction, facilities-related project management or facilities management 9132 functions for the University on the same capital project.

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IX. ENVIRONMENTAL IMPACT REPORTS.

9134 It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of \$300,000 or more.

9141 X. BUILDING DEMOLITIONS.

9142 It shall be the policy of the University to consider the environmental and historical aspects of any 9143 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. 9144 The University shall develop a procedure for the preparation and review of demolition requests, 9145 including any necessary reviews by the Department of Historic Resources and the Art and Architectural 9146 Review Board in accordance with State historic preservation requirements generally applicable to capital 9147 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding 9148 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported 9149 Debt, general laws applicable to State owned property shall apply.

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XI. BUILDING OR LAND ACQUISITIONS.

9151 It is the policy of the University that capital projects involving building or land acquisition shall be 9152 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. 9153 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure 9154 that the project management system implemented pursuant to Section XIII below provides for a review 9155 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent 9156 purchaser would perform to the end that any building or land acquired by the University shall be 9157 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to 9158 the University and that the cost of the real property to be acquired, together with any contemplated 9159 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating 9160 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies 9161

9162 pertaining to the acquisition of buildings or land for capital projects are carried out.

9163 A. Environmental and Land Use Considerations.

9164 It is the policy of the University to reasonably cooperate with each locality affected by the 9165 acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such 9166 9167 acquisition. The University shall consider the zoning and comprehensive plan designation by the locality 9168 of the building or land and surrounding parcels, as well as any designation by State or federal agencies 9169 of historically or archeologically significant areas on the land. Nothing herein shall be construed as 9170 requiring the University to comply with local zoning laws and ordinances.

9171 B. Infrastructure and Site Condition.

9172 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project 9173 management systems implemented under Section XIII below provide for a review of the following 9174 matters prior to acquisition of the building or land: that any land can be developed for its intended 9175 9176 purpose without extraordinary cost; that an environmental engineer has been engaged by the University 9177 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular 9178 ingress and egress to serve the contemplated use of the building or land; that utilities and other services 9179 to the land are adequate or can reasonably be provided or have been provided in the case of building 9180 acquisitions; and that the condition and grade of the soils have been examined to determine if any 9181 conditions exist that would require extraordinary site work or foundation systems.

9182 C. Title and Survey.

9183 A survey shall be prepared for any real property acquired, and an examination of title to the real 9184 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the 9185 9186 Commonwealth. Based upon the survey and title examination or report, the President, acting through the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real 9187 9188 property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, 9189 encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse 9190 effect upon the University's ability to own, occupy, convey or develop the real property.

9191 D. Appraisal.

9192 An appraisal shall be conducted of the real property to be acquired to determine its fair market value 9193 and the consistency of the fair market value with the price agreed upon by the University.

9194 XII. BUILDING OR LAND DISPOSITIONS.

9195 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or 9196 buildings, the acquisition or construction of which was funded entirely or in part by a general fund 9197 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both 9198 Board of Visitors approval and other approvals in accordance with general law applicable to 9199 State-owned property and with the University's Enabling Legislation. 9200

XIII. PROJECT MANAGEMENT SYSTEMS.

9201 The President, acting through the Executive Vice President and Chief Operating Officer, shall 9202 implement one or more systems for the management of capital projects for the University. The systems 9203 may include the delegation of project management authority to appropriate University officials, including 9204 a grant of authority to such officials to engage in further delegation of authority as the President, acting 9205 through the Executive Vice President and Chief Operating Officer, deems appropriate.

9206 The project management systems for capital projects shall be designed to ensure that such projects 9207 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely 9208 related subjects such as selection of architects or policies applicable to University buildings and grounds.

9209 The project management systems may include one or more reporting systems applicable to capital 9210 projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief 9211 9212 Operating Officer, on the status of such projects during construction. 9213

XIV. REPORTING REQUIREMENTS.

9214 In addition to complying with any internal reporting systems contained in the University's project 9215 management systems, as described in Section XIII above, the University shall comply with State 9216 reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project 9217 9218 constructs improvements on land, or renovates property, that originally was acquired or constructed in 9219 whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is 9220 9221 9222 reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, 9223

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9224 the President, acting through the Executive Vice President and Chief Operating Officer, shall report to 9225 the Department of General Services on the status of such capital projects at the initiation of the project, 9226 prior to the commencement of construction, and at the time of acceptance of any such capital project. 9227 ATTACHMENT 1

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Restructured Higher Education Financial and Administrative Operations Act,

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

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

Governed by Subchapter 3 of the

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

9234 In accordance with the provisions of the Restructured Higher Education Financial and Administrative 9235 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in 9236 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the 9237 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth 9238 pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, 9239 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and 9240 construction by the Institution, excluding the University of Virginia Medical Center:

9241 § 1. Purpose. -

9242 The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, 9243 services, insurance, and construction by the Institution from nongovernmental sources, to include 9244 governmental procurement that may or may not result in monetary consideration for either party. These 9245 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the 9246 Institution, the contractor, or some third party is providing the consideration.

9247 § 2. Scope of Procurement Authority. -

9248 Subject to these Rules, and the Institution's continued substantial compliance with the terms and 9249 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the 9250 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and 9251 exercise all of the authority relating to procurement of goods, services, insurance, and construction, 9252 including but not limited to capital outlay-related procurement and information technology-related 9253 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring 9254 Act. 9255

§ 3. Competition is the Priority. -

9256 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all 9257 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any 9258 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's 9259 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body 9260 of the Institution that competition be sought to the maximum feasible degree, that procurement 9261 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad 9262 flexibility in fashioning details of such competition, that the rules governing contract awards be made 9263 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing 9264 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely 9265 exchange information concerning what is sought to be procured and what is offered. The Institution 9266 may consider best value concepts when procuring goods and nonprofessional services, but not 9267 construction or professional services. Professional services will be procured using a qualification-based 9268 selection process. The criteria, factors, and basis for consideration of best value and the process for the 9269 consideration of best value shall be as stated in the procurement solicitation.

9270 § 4. Definitions.

9271 As used in these Rules:

9272 "Affiliate" means an individual or business that controls, is controlled by, or is under common 9273 control with another individual or business. A person controls an entity if the person owns, directly or 9274 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition 9275 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 9276 members of the board of directors or similar governing body of the business or (ii) is convertible into, 9277 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 9278 partnership interest shall be deemed to be a voting security.

9279 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 9280 and various elements of required services that in total are optimal relative to the Institution's needs.

9281 "Business" means any type of corporation, partnership, limited liability company, association, or sole 9282 proprietorship operated for profit.

9283 "Competitive negotiation" is a method of contractor selection that includes the following elements:

9284 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 9285 procured, specifying the factors that will be used in evaluating the proposal and containing or9286 incorporating by reference the other applicable contractual terms and conditions, including any unique9287 capabilities or qualifications that will be required of the contractor.

9288 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
9289 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
9290 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
9291 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
9292 also shall be published on the Department of General Services' central electronic procurement website
9293 and may be published on other appropriate websites. In addition, proposals may be solicited directly
9294 from potential contractors.

9295 3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in 9296 9297 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 9298 basis of initial responses and with emphasis on professional competence, to provide the required 9299 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 9300 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, 9301 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors 9302 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss 9303 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where 9304 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors 9305 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this 9306 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information 9307 developed in the selection process to this point, the Institution shall select in the order of preference two 9308 or more offerors whose professional qualifications and proposed services are deemed most meritorious.

9309 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory 9310 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the 9311 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be 9312 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a 9313 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and 9314 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly 9315 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to 9316 that offeror.

9317 A contract for architectural or professional engineering services relating to construction projects may 9318 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 9319 9320 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 9321 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the 9322 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 9323 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 9324 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 9325 Request for Proposal stated the potential for a multi-vendor award.

9326 Multiphase professional services contracts satisfactory and advantageous to the Institution for
9327 environmental, location, design and inspection work regarding construction of infrastructure projects may
9328 be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only,
9329 when completion of the earlier phases is necessary to provide information critical to the negotiation of a
9330 fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the
9331 Institution shall state the anticipated intended total scope of the project and determine in writing that the
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9333 b. Procurement of other than professional services. Selection shall be made of two or more offerors 9334 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 9335 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 9336 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but 9337 need not be the sole determining factor. After negotiations have been conducted with each offeror so 9338 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 9339 shall award the contract to that offeror. When the terms and conditions of multiple awards are so 9340 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 9341 Institution determine in writing and in its sole discretion that only one offeror has made the best 9342 proposal, a contract may be negotiated and awarded to that offeror.

9343 "Competitive sealed bidding" is a method of contractor selection, other than for professional services,9344 which includes the following elements:

9345 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications9346 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided

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9347 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 9348 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 9349 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of 9350 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been 9351 qualified under the criteria set forth in the first solicitation.

9352 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 9353 publication on the Department of General Services' central electronic procurement website. Public notice 9354 also may be published in a newspaper of general circulation or on other appropriate websites, or both.

9355 In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall 9356 include businesses selected from a list made available by the Department of Minority Business 9357 Enterprise. 9358

3. Public opening and announcement of all bids received.

9359 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 9360 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 9361 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which 9362 are helpful in determining acceptability.

9363 Award to the lowest responsive and responsible bidder. When the terms and conditions of 5. 9364 multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

9365 "Construction" means building, altering, repairing, improving or demolishing any structure, building 9366 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

9367 "Construction management contract" means a contract in which a party is retained by the owner to 9368 coordinate and administer contracts for construction services for the benefit of the owner, and may also 9369 include, if provided in the contract, the furnishing of construction services to the owner.

9370 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 9371 agreement with the Commonwealth of Virginia, a public institution of higher education of the 9372 Commonwealth that has entered into a management agreement with the Commonwealth to be governed 9373 by the provisions of Subchapter 3 of the Restructuring Act.

9374 "Design-build contract" means a contract between the Institution and another party in which the party 9375 contracting with the Institution agrees to both design and build the structure, roadway or other item 9376 specified in the contract.

9377 "Goods" means all material, equipment, supplies, and printing, including information technology and 9378 telecommunications goods such as automated data processing hardware and software.

9379 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of 9380 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or 9381 delivery schedule for the goods, services or construction being procured.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be 9382 9383 9384 specified without the results of the first or prior phase of the contract.

9385 "Nonprofessional services" means any services not specifically identified as professional services in 9386 the definition of professional services and includes small construction projects valued not over \$1 9387 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall 9388 still apply to professional services for such small construction projects.

9389 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at 9390 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or 9391 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the 9392 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who 9393 would have been eligible and qualified to submit a bid or proposal had the contract been procured 9394 through competitive sealed bidding or competitive negotiation.

9395 "Professional services" means work performed by an independent contractor within the scope of the 9396 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 9397 dentistry, medicine, optometry, pharmacy or professional engineering.

9398 "Public body" means any legislative, executive or judicial body, agency, office, department, authority, 9399 post, commission, committee, institution, board or political subdivision created by law to exercise some 9400 sovereign power or to perform some governmental duty, and empowered by law to undertake the 9401 activities described in these Rules.

9402 "Public contract" means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law. 9403

9404 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform 9405 fully the contract requirements and the moral and business integrity and reliability that will assure good 9406 faith performance, and who has been pregualified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects 9407

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9408 to the Invitation to Bid.

9409 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative 9410 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

9411 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction 9412 adopted by the governing body of the Covered Institution.

9413 'Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified 9414 goods or nonprofessional services through real-time electronic bidding, with the award being made to 9415 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 9416 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 9417 established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered 9418 9419 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials 9420 and supplies.

9421 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working 9422 environment and individual goals that utilizes work experience and related services for assisting the 9423 handicapped person to progress toward normal living and a productive vocational status. 9424

§ 5. Methods of procurement. -

9425 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 9426 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or 9427 competitive negotiation as provided in this section, unless otherwise authorized by law.

9428 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 9429 shall be used for design services. 9430

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

9431 D. Construction may be procured only by competitive sealed bidding, except that competitive 9432 negotiation may be used in the following instances upon a determination made in advance by the 9433 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally 9434 advantageous to the public, which writing shall document the basis for this determination: 9435

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

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

9437 3. By the Institution for the construction of highways and any draining, dredging, excavation, 9438 grading or similar work upon real property.

9439 E. Upon a determination in writing that there is only one source practicably available for that which 9440 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed 9441 bidding or competitive negotiation. The writing shall document the basis for this determination. The 9442 Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which 9443 the contract was or will be awarded. This notice shall be posted in a designated public area, which may 9444 9445 be the Department of General Services' website for the Commonwealth's central electronic procurement 9446 system, or published in a newspaper of general circulation on the day the Institution awards or 9447 announces its decision to award the contract, whichever occurs first. Public notice shall also be 9448 published on the Department of General Services' website for the Commonwealth's central electronic 9449 procurement system and may be published on other appropriate websites.

In case of emergency, a contract may be awarded without competitive sealed bidding or 9450 F. 9451 competitive negotiation; however, such procurement shall be made with such competition as is 9452 practicable under the circumstances. A written determination of the basis for the emergency and for the 9453 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 9454 written notice stating that the contract is being awarded on an emergency basis, and identifying that 9455 which is being procured, the contractor selected, and the date on which the contract was or will be 9456 awarded. This notice shall be posted in a designated public area, which may be the Department of 9457 General Services' website for the Commonwealth's central electronic procurement system, or published 9458 in a newspaper of general circulation on the day the Institution awards or announces its decision to 9459 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also 9460 be published on the Department of General Services' website for the Commonwealth's central electronic 9461 procurement system and other appropriate websites.

9462 The Institution may establish purchase procedures, if adopted in writing, not requiring G. 9463 competitive sealed bids or competitive negotiation for single or term contracts for goods and services 9464 other than professional services if the aggregate or the sum of all phases is not expected to exceed 9465 \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

9466 The Institution may establish purchase procedures, if adopted in writing, not requiring Η. 9467 competitive negotiation for single or term contracts for professional services if the aggregate or the sum 9468 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide 9469 for competition wherever practicable.

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9470 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase 9471 of goods, products or commodities from a public auction sale is in the best interests of the public, such 9472 items may be purchased at the auction, including online public auctions. The writing shall document the 9473 basis for this determination.

9474 J. The purchase of goods or nonprofessional services, but not construction or professional services, 9475 may be made by reverse auctioning.

9476 § 6. Cooperative procurement. -

9477 A. In circumstances where the Institution determines and documents that statewide contracts for 9478 goods and services, including information technology and telecommunications goods and services, do not 9479 provide goods and services to the Institution that meet its business goals and objectives, the Institution is 9480 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on 9481 behalf of or in conjunction with public bodies, public or private health or educational institutions, other 9482 public or private organizations or entities, including public-private partnerships, charitable organizations, 9483 health care provider alliances or purchasing organizations or entities, or with public agencies or 9484 institutions or group purchasing organizations of the several states, territories of the United States, or the 9485 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce 9486 administrative expense in any acquisition of goods and services, other than professional services. The 9487 Institution may purchase from any authority, department, agency, institution, city, county, town, or other 9488 political subdivision of the Commonwealth's contract even if it did not participate in the request for 9489 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the 9490 procurement was being conducted on behalf of other public bodies. In such instances, deviation from 9491 the procurement procedures set forth in these Rules and the administrative policies and procedures 9492 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of 9493 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic 9494 procurement system, including the requirement for payment of applicable fees. Nothing herein shall 9495 prohibit the payment by direct or indirect means of any administrative fee that will allow for 9496 participation in any such arrangement.

9497 In circumstances where statewide contracts for goods and services, including information Β. 9498 technology and telecommunications goods and services, do not provide goods and services to meet the 9499 Institution's business goals and objectives, and as authorized by the United States Congress and 9500 consistent with applicable federal regulations, and provided the terms of the contract permit such 9501 purchases:

9502 1. The Institution may purchase goods and nonprofessional services, from a United States General 9503 Services Administration contract or a contract awarded by any other agency of the United States 9504 government; and

9505 The Institution may purchase telecommunications and information technology goods and 2. nonprofessional services from a United States General Services Administration contract or a contract 9506 9507 awarded by any other agency of the United States government. 9508

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

9509 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed 9510 price design-build basis or construction management basis in accordance with the provisions of this 9511 section.

9512 B. Procurement of construction by the design-build or construction management method shall be a 9513 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 9514 qualifications. Based upon the information submitted and any other relevant information which the 9515 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 9516 selected by the Commonwealth and requested to submit proposals. 9517

§ 8. Modification of the contract. -

9518 A. A contract awarded by the Institution may include provisions for modification of the contract 9519 during performance, but no fixed-price contract may be increased by more than 25% of the amount of 9520 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's 9521 president or his designee. In no event may the amount of any contract, without adequate consideration, 9522 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of 9523 an error in its bid or offer.

9524 B. The Institution may extend the term of an existing contract for services to allow completion of 9525 any work undertaken but not completed during the original term of the contract.

9526 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 9527 modifications. 9528

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

9529 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis 9530

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9531 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 9532 Institution shall include businesses selected from a list made available by the Department of Minority 9533 Business Enterprise.

9534 B. The Institution shall establish programs consistent with this section to facilitate the participation 9535 of small businesses and businesses owned by women and minorities in procurement transactions. The 9536 programs established shall be in writing and shall include cooperation with the Department of Minority 9537 Business Enterprise, the United States Small Business Administration, and other public or private 9538 agencies. The Institution shall submit annual progress reports on minority business procurement to the 9539 Department of Minority Business Enterprise.

9540 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 9541 analysis that documents a statistically significant disparity between the availability and utilization of 9542 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 9543 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 9544 law

9545 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 9546 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 9547 that employing ex-offenders on the specific contract is not in its best interest. 9548

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

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

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

9551 a. The contractor will not discriminate against any employee or applicant for employment because of 9552 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably 9553 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, 9554 9555 available to employees and applicants for employment, notices setting forth the provisions of this 9556 nondiscrimination clause.

9557 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 9558 contractor, will state that such contractor is an equal opportunity employer.

9559 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 9560 shall be deemed sufficient for the purpose of meeting the requirements of this section.

9561 The contractor will include the provisions of the foregoing paragraphs a, b and c in every 2. subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 9562 9563 subcontractor or vendor. 9564

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

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

9566 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace 9567 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 9568 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 9569 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 9570 workplace and specifying the actions that will be taken against employees for violations of such 9571 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 9572 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the 9573 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 9574 binding upon each subcontractor or vendor.

9575 For the purposes of this section, "drug-free workplace" means a site for the performance of work 9576 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 9577 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 9578 dispensation, possession or use of any controlled substance or marijuana during the performance of the 9579 contract. 9580

§ 12. Use of brand names. -

9581 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or 9582 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be 9583 deemed to convey the general style, type, character, and quality of the article desired. Any article that 9584 the Institution in its sole discretion determines to be the equal of that specified, considering quality, 9585 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. 9586

§ 13. Comments concerning specifications. -

The Institution shall establish procedures whereby comments concerning specifications or other 9587 9588 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the 9589 time set for receipt of bids or proposals or award of the contract.

9590 § 14. Prequalification generally; prequalification for construction. -

9591 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or 9592 construction, and consideration of bids or proposals limited to prequalified contractors. Any

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9593 prequalification procedure shall be established in writing and sufficiently in advance of its9594 implementation to allow potential contractors a fair opportunity to complete the process.

9595 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant9596 to a prequalification process for construction projects adopted by the Institution. The process shall be9597 consistent with the provisions of this section.

9598 The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.

9605 In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

9610 At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

9615 A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

9617 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the 9618 following:

9619 1. The contractor does not have sufficient financial ability to perform the contract that would result
9620 from such procurement. If a bond is required to ensure performance of a contract, evidence that the
9621 contractor can acquire a surety bond from a corporation included on the United States Treasury list of
9622 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to
9623 establish the financial ability of the contractor to perform the contract resulting from such procurement;

9624 2. The contractor does not have appropriate experience to perform the construction project in **9625** question;

9626 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

9629 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a 9630 9631 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor 9632 has been in substantial noncompliance with the terms and conditions of comparable construction 9633 contracts with another public body without good cause. The Institution may not utilize this provision to 9634 deny prequalification unless the facts underlying such substantial noncompliance were documented in 9635 writing in the prior construction project file and such information relating thereto given to the contractor 9636 at that time, with the opportunity to respond;

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

96439644 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an9644 established debarment procedure from bidding or contracting by any public body, agency of another9645 state or agency of the federal government; and

9646 7. The contractor failed to provide to the Institution in a timely manner any information requested9647 by the Institution relevant to subdivisions 1 through 6 of this subsection.

9648 § 15. Negotiation with lowest responsible bidder. -

9649 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as
9650 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the
9651 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds.
9652 However, the negotiation may be undertaken only under conditions and procedures described in writing
9653 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

9654 § 16. Cancellation, rejection of bids; waiver of informalities. -

9655 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or 9656 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 9657 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 9658 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 9659 particular responsive and responsible bidder or offeror.

9660 B. The Institution may waive informalities in bids.

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§ 17. Exclusion of insurance bids prohibited. -

9662 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance 9663 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be 9664 excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a 9665 9666 prospective insurer pursuant to § 18. 9667

§ 18. Debarment. -

Prospective contractors may be debarred from contracting for particular types of supplies, services, 9668 9669 insurance or construction, for specified periods of time. Any debarment procedure shall be established in 9670 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a 9671 contractor's unsatisfactory performance for the Institution. 9672

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

9673 A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 9674 9675 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets 9676 Development Council, shall advise the Institution concerning the designation of recycled goods. 9677 9678

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

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or 9679 9680 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 9681 decided by lot.

9682 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 9683 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 9684 lowest responsive and responsible bidder who is a resident of Virginia.

9685 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where 9686 goods are being offered, and existing price preferences have already been taken into account, preference 9687 shall be given to the bidder whose goods contain the greatest amount of recycled content. 9688

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

9689 In determining the award of any contract for coal to be purchased for use in the Institution with state 9690 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more 9691 9692 than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined 9693 elsewhere. 9694

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

9695 A. In determining the award of any contract for paper and paper products to be purchased for use 9696 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low 9697 9698 responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

9699 B. For purposes of this section, recycled paper and paper products means any paper or paper 9700 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247. 9701

§ 23. Withdrawal of bid due to error. -

9702 A. A bidder for a public construction contract, other than a contract for construction or maintenance 9703 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 9704 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 9705 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 9706 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made 9707 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can 9708 be clearly shown by objective evidence drawn from inspection of original work papers, documents and 9709 materials used in the preparation of the bid sought to be withdrawn.

9710 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from 9711 consideration if the price bid would have been substantially lower than the other bids due solely to the 9712 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 9713 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 9714 objective evidence drawn from inspection of original work papers, documents and materials used in the 9715 preparation of the bid sought to be withdrawn.

9716 One of the following procedures for withdrawal of a bid shall be selected by the Institution and 9717 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 9718 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 9719 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or 9720 designated official his original work papers, documents and materials used in the preparation of the bid 9721 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 9722 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 9723 instance, the work papers, documents and materials may be considered as trade secrets or proprietary 9724 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 9725 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 9726 shall have two hours after the opening of bids within which to claim in writing any mistake as defined 9727 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 9728 period has elapsed. The mistake shall be proved only from the original work papers, documents and 9729 materials delivered as required herein.

9730 B. The Institution may establish procedures for the withdrawal of bids for other than construction 9731 contracts.

9732 C. No bid shall be withdrawn under this section when the result would be the awarding of the 9733 contract on another bid of the same bidder or of another bidder in which the ownership of the 9734 withdrawing bidder is more than 5%.

9735 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed 9736 to be the low bid.

9737 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or 9738 labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for 9739 9740 which the withdrawn bid was submitted.

9741 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 9742 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid 9743 price, provided such bidder is a responsible and responsive bidder. 9744

§ 24. Contract Pricing Arrangements. -

9745 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 9746 basis that is not prohibited by these Rules.

9747 B. Except in case of emergency affecting the public health, safety or welfare, no public contract 9748 shall be awarded on the basis of cost plus a percentage of cost.

9749 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis 9750 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole 9751 or part as a percentage of such claims, shall not be prohibited by this section. 9752

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

9753 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage 9754 9755 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 9756 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 9757 evidence of such coverage.

9758 B. The Department of General Services shall provide the form to the Institution. Failure of the 9759 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 9760 of subsection A.

9761 C. No subcontractor shall perform any work on a construction project of the Institution unless he 9762 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage 9763 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 9764 Virginia. 9765

§ 26. Retainage on construction contracts. -

9766 A. In any contract issued by the Institution for construction that provides for progress payments in 9767 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% 9768 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful 9769 performance of the contract. All amounts withheld may be included in the final payment.

9770 B. Any subcontract for a public project that provides for similar progress payments shall be subject 9771 to the provisions of this section.

9772 § 27. Public construction contract provisions barring damages for unreasonable delays declared void. 9773

9774 A. Any provision contained in any public construction contract of the Institution that purports to 9775 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the 9776

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9777 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to 9778 causes within their control shall be void and unenforceable as against public policy.

9779 Subsection A shall not be construed to render void any provision of a public construction Β. 9780 contract awarded by the Institution that:

9781 Allows the recovery of that portion of delay costs caused by the acts or omissions of the 1. 9782 contractor, or its subcontractors, agents or employees;

- 9783 2. Requires notice of any delay by the party claiming the delay;
- 9784 3. Provides for liquidated damages for delay; or 9785
 - 4. Provides for arbitration or any other procedure designed to settle contract disputes.

9786 A contractor making a claim against the Institution for costs or damages due to the alleged C. 9787 delaying of the contractor in the performance of its work under any public construction contract of the 9788 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the 9789 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage 9790 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation 9791 or arbitration to be false or to have no basis in law or in fact.

9792 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 9793 the contractor in the performance of work under any public construction contract for the Institution, it 9794 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to 9795 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 9796 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 9797 determined through litigation or arbitration to have been made in bad faith. 9798

§ 28. Bid bonds. -

9799 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 9800 million shall be accompanied by a bid bond from a surety company selected by the bidder that is 9801 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will 9802 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 9803 5% of the amount bid.

9804 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for 9805 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

9806 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 9807 or proposals for construction contracts anticipated to be less than \$1 million. 9808

§ 29. Performance and payment bonds.

9809 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million 9810 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to 9811 any prime contractor requiring the performance of labor or the furnishing of materials for buildings, 9812 structures or other improvements to real property owned by the Institution, the contractor shall furnish to 9813 the Institution the following bonds:

9814 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 9815 conditioned upon the faithful performance of the contract in strict conformity with the plans, 9816 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a 9817 form and amount satisfactory to the Institution.

9818 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of 9819 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom 9820 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the 9821 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied 9822 or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but 9823 9824 only for periods when the equipment rented is actually used at the site.

9825 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 9826 that are authorized to do business in Virginia. 9827

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

D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof. E. Nothing in this section shall preclude the Institution from requiring payment or performance

9829 9830 bonds for construction contracts below \$1 million.

9831 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish 9832 a payment bond with surety thereon in the sum of the full amount of the contract with such 9833 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are 9834 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the 9835 work provided for in the subcontract. 9836

§ 30. Alternative forms of security. -

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9837 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash **9838** escrow in the face amount required for the bond.

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9839 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the 9840 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 9841 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 9842 be granted only upon a determination that the alternative form of security proffered affords protection to 9843 the Institution equivalent to a corporate surety's bond.

9844 § 31. Bonds on other than construction contracts. -

9845 The Institution may require bid, payment, or performance bonds for contracts for goods or services if 9846 provided in the Invitation to Bid or Request for Proposal.

9847 § 32. Action on performance bond. -

No action against the surety on a performance bond shall be brought by the Institution unless 9848 9849 brought within one year after (i) completion of the contract, including the expiration of all warranties 9850 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

9851 § 33. Actions on payment bonds; waiver of right to sue. -

9852 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 9853 material in accordance with the contract documents in furtherance of the work provided in any contract 9854 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 9855 days after the day on which the claimant performed the last of the labor or furnished the last of the 9856 materials for which he claims payment, may bring an action on the payment bond to recover any 9857 amount due him for the labor or material. The obligee named in the bond need not be named a party to 9858 the action.

9859 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 9860 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's 9861 payment bond only if he has given written notice to the contractor within 180 days from the day on 9862 which the claimant performed the last of the labor or furnished the last of the materials for which he 9863 claims payment, stating with substantial accuracy the amount claimed and the name of the person for 9864 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be 9865 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at 9866 any place where his office is regularly maintained for the transaction of business. Claims for sums 9867 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the 9868 time limitations stated in this subsection.

9869 C. Any action on a payment bond shall be brought within one year after the day on which the 9870 person bringing such action last performed labor or last furnished or supplied materials.

9871 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 9872 it is in writing, signed by the person whose right is waived, and executed after such person has 9873 performed labor or furnished material in accordance with the contract documents. 9874

§ 34. Public inspection of certain records. -

9875 A. Except as provided in this section, all proceedings, records, contracts and other public records 9876 relating to procurement transactions shall be open to the inspection of any citizen, or any interested 9877 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et 9878 seq.).

9879 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 9880 shall not be open to public inspection.

9881 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 9882 bid records within a reasonable time after the opening of all bids but prior to award, except in the event 9883 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid 9884 records shall be open to public inspection only after award of the contract.

9885 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect 9886 proposal records within a reasonable time after the evaluation and negotiations of proposals are 9887 completed but prior to award, except in the event that the Institution decides not to accept any of the 9888 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection 9889 only after award of the contract.

Any inspection of procurement transaction records under this section shall be subject to 9890 E. 9891 reasonable restrictions to ensure the security and integrity of the records.

9892 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection 9893 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 9894 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the 9895 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission 9896 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the 9897 reasons why protection is necessary.

9898 § 35. Exemption for certain transactions. -

9899 A. The provisions of these Rules shall not apply to:

9900 1. The selection of services related to the management and investment of the Institution's endowment 9901 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be 9902 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by 9903 § 23-76.1.

9904 The purchase of items for resale at retail bookstores and similar retail outlets operated by the 9905 Institution. However, such purchase procedures shall provide for competition where practicable.

9906 Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is 9907 9908 obligated to conform to procurement procedures that are established by federal statutes or regulations, 9909 whether or not those federal procedures are in conformance with the provisions of these Rules. 9910

4. The University of Virginia Medical Center.

9911 The purchase of goods and services by the Institution when such purchases are made under a 5. 9912 remedial plan established by the Governor pursuant to subsection C of $\S 9$ of these Rules.

9913 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 9914 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 9915 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 9916 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 9917 of the Institution's President or his designee that acceptance of the grant or contract funds under the 9918 applicable conditions is in the public interest. Such determination shall state the specific provision of 9919 these Rules in conflict with the conditions of the grant or contract.

9920 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

9921 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into 9922 contracts with faith-based organizations for the purposes described in this section on the same basis as 9923 any other nongovernmental source without impairing the religious character of such organization, and 9924 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

9925 B. For the purposes of this section, "faith-based organization" means a religious organization that is 9926 or applies to be a contractor to provide goods or services for programs funded by the block grant 9927 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 9928 104-193.

9929 The Institution, in procuring goods or services, or in making disbursements pursuant to this 9930 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 9931 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 9932 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of 9933 religious freedom by the recipients of such goods, services, or disbursements.

9934 The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and D. 9935 purchase orders prominently display a nondiscrimination statement indicating that it does not 9936 discriminate against faith-based organizations.

9937 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on 9938 9939 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 9940 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other 9941 organizations that contract with public bodies to account for the use of the funds provided; however, if 9942 the faith-based organization segregates public funds into separate accounts, only the accounts and 9943 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) 9944 shall be construed to supersede or otherwise override any other applicable state law.

9945 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 9946 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent 9947 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to 9948 expenditures pursuant to contracts, if any, for the services of chaplains.

9949 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization 9950 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based 9951 organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of 9952 a particular religion.

9953 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 9954 to a contract between the Institution and a faith-based organization, objects to the religious character of 9955 the faith-based organization from which the individual receives or would receive the goods, services, or 9956 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 9957 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

9958 The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a 9959 9960 notice in **bold** face type that states: "Neither the Institution's selection of a charitable or faith-based 9961 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's

9962 charitable or religious character, practices, or expression. No provider of services may discriminate 9963 against you on the basis of religion, a religious belief, or your refusal to actively participate in a 9964 religious practice. If you object to a particular provider because of its religious character, you may 9965 request assignment to a different provider. If you believe that your rights have been violated, please 9966 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

- 9967 § 37. Exemptions from competition for certain transactions. -
- 9968 The Institution may enter into contracts without competition, as that term is described in subsections9969 A through J of § 5 (Methods of procurement) of these Rules, for:
- **9970** 1. The purchase of goods or services that are produced or performed by or related to:
- a. Persons, or in schools or workshops, under the supervision of the Virginia Department for theBlind and Vision Impaired;
- b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supportedemployment services serving the handicapped;
- 9975 c. Private educational institutions; or
- **9976** d. Other public educational institutions.
- **9977** 2. Speakers and performing artists;
- **9978** 3. Memberships and Association dues;
- 9979 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of9980 goods or services by the Institution;
- **9981** 5. Group travel in foreign countries;
- 9982 6. Conference facilities and services;
- **9983** 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
- **9985** 8. Royalties; or
- 9986 9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or 10. Maintenance contract renewals for scientific research equipment and software, provided that the
- 9989 institution has posted the renewal to eVa and documented that there was only one response or less and
 9990 such documentation includes a statement signed by the buyer indicating that no firm other than the
 9991 original manufacturer/developer offers the service.
- **9992** § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain **9993** transactions; limitations. -
- 9994 The Institution may enter into contracts for insurance or electric utility service without competitive 9995 sealed bidding or competitive negotiation if purchased through an association of which the Institution is 9996 a member if the association was formed and is maintained for the purpose of promoting the interest and 9997 welfare of and developing close relationships with similar public bodies, provided such association has 9998 procured the insurance or electric utility services by use of competitive principles and provided that the 9999 Institution has made a determination in advance after reasonable notice to the public and set forth in 10000 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the 10001 public. The writing shall document the basis for this determination.
- 10002 § 39. Definitions. -
- As used in §§ 39 through 46, unless the context requires a different meaning:
- 10004 "Contractor" means the entity that has a direct contract with the Institution.
- 10005 "Debtor" means any individual, business, or group having a delinquent debt or account with any state 10006 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.
- 10007 "Payment date" means either (i) the date on which payment is due under the terms of a contract for 10008 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after 10009 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or 10010 services by the Institution.
- 10011 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
 10012 whom the contract was awarded or to any subcontractor in the performance of the work provided for in
 10013 such contract.
- **10014** § 40. Exemptions. -
- 10015 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.
- 10017 § 41. Retainage to remain valid. -
- 10018 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.
- 10020 § 42. Prompt payment of bills by the Institution. -
- 10021 A. The Institution shall promptly pay for the completely delivered goods or services by the required 10022 payment date.

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10023 Payment shall be deemed to have been made when offset proceedings have been instituted, as 10024 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

10025 Separate payment dates may be specified for contracts under which goods or services are Β. 10026 provided in a series of partial deliveries or executions to the extent that such contract provides for 10027 separate payment for such partial delivery or execution.

10028 § 43. Defect or impropriety in the invoice or goods and/or services received. -

10029 In instances where there is a defect or impropriety in an invoice or in the goods or services received, 10030 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would 10031 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services. 10032

10033 § 44. Date of postmark deemed to be date payment is made. -

10034 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date 10035 payment is made for purposes of these Rules.

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

Any contract awarded by the Institution shall include:

10038 1. A payment clause that obligates the contractor to take one of the two following actions within 10039 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the 10040 subcontractor under that contract:

10041 Pay the subcontractor for the proportionate share of the total payment received from the a. 10042 Institution attributable to the work performed by the subcontractor under that contract; or

10043 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the 10044 subcontractor's payment with the reason for nonpayment.

10045 2. A payment clause that requires (i) individual contractors to provide their social security numbers 10046 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 10047 numbers.

10048 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts 10049 owed by the contractor that remain unpaid after seven days following receipt by the contractor of 10050 payment from the Institution for work performed by the subcontractor under that contract, except for 10051 amounts withheld as allowed in subdivision 1.

10052 An interest rate clause stating, "Unless otherwise provided under the terms of this contract, 10053 interest shall accrue at the rate of 1% per month."

10054 Any such contract awarded shall further require the contractor to include in each of its subcontracts a 10055 provision requiring each subcontractor to include or otherwise be subject to the same payment and 10056 interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause 10057 10058 in this section shall not be construed to be an obligation of the Institution. A contract modification shall 10059 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement 10060 claim shall not include any amount for reimbursement for the interest charge. 10061

§ 46. Interest penalty; exceptions. -

10062 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the 10063 Institution to a vendor that remain unpaid after seven days following the payment date. However, 10064 nothing in this section shall affect any contract providing for a different rate of interest, or for the 10065 payment of interest in a different manner.

10066 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in 10067 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of 10068 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 10069 10070 interest established pursuant to § 58.1-1812 of the Code of Virginia.

10071 Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed C. 10072 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 10073 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 10074 exception from the interest penalty provided by this subsection shall apply only to that portion of a 10075 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 10076 the disagreement.

10077 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 10078 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 10079 contractor from receiving interest on such funds under an approved escrow agreement.

10080 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 10081 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the 10082 10083 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 10084 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue

10085 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days 10086 following the payment date.

§ 47. Ineligibility. -

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10088 Any bidder, offeror or contractor refused permission to participate, or disqualified from A. 10089 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 10090 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the 10091 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 10092 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 10093 requested by the bidder within five business days after receipt of the notice.

10094 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 10095 challenging the evaluation. The Institution shall issue its written determination of disqualification or 10096 ineligibility based on all information in the possession of the Institution, including any rebuttal 10097 information, within five business days of the date the Institution received such rebuttal information.

10098 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 10099 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 10100 evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The 10101 10102 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 10103 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 10104 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 10105 in § 54.

10106 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 10107 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 10108 restoration of eligibility.

10109 § 48. Appeal of denial of withdrawal of bid. -

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final 10110 10111 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 10112 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 10113 instituting legal action as provided in § 54.

10114 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, 10115 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 10116 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released 10117 only upon a final determination that the bidder was entitled to withdraw the bid.

10118 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 10119 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 10120 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to 10121 Bid, the sole relief shall be withdrawal of the bid. 10122

§ 49. Determination of nonresponsibility. -

10123 A. Following public opening and announcement of bids received on an Invitation to Bid, the 10124 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed 10125 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent 10126 low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution 10127 10128 determines that the apparent low bidder is not responsible, it shall proceed as follows:

10129 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 10130 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 10131 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that 10132 relate to the determination, if so requested by the bidder within five business days after receipt of the 10133 notice.

10134 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 10135 challenging the evaluation. The Institution shall issue its written determination of responsibility based 10136 on all information in the possession of the Institution, including any rebuttal information, within five 10137 business days of the date the Institution received the rebuttal information. At the same time, the 10138 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

10139 3. Such notice shall state the basis for the determination, which shall be final unless the bidder 10140 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures 10141 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 10142 as provided in § 54.

10143 The provisions of this subsection shall not apply to procurements involving the prequalification of 10144 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such 10145 bidders are not responsible.

10146 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the 10147 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in 10148 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or 10149 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the 10150 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or 10151 directed award as provided in subsection A of § 54, or both.

10152 If it is determined that the decision of the Institution was not an honest exercise of discretion, but 10153 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state 10154 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has 10155 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

10156 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract 10157 shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules. 10158

10159 D. Nothing contained in this section shall be construed to require the Institution, when procuring by 10160 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 10161 to be the most advantageous. 10162

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

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 10163 10164 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10165 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 10166 notice of the award or the announcement of the decision to award shall be given by the Institution in 10167 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 10168 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no 10169 10170 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 10171 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part 10172 upon information contained in public records pertaining to the procurement transaction that are subject 10173 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 10174 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or 10175 10176 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 10177 10178 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 10179 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the 10180 10181 10182 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of 10183 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 10184 standards of § 55 of these Rules.

10185 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the 10186 sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it 10187 to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or 10188 capricious, then the sole relief shall be as hereinafter provided.

10189 Where the award has been made but performance has not begun, the performance of the contract 10190 may be enjoined. Where the award has been made and performance has begun, the Institution may 10191 declare the contract void upon a finding that this action is in the best interest of the public. Where a 10192 contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits. 10193

10194 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to 10195 10196 award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder. 10197 10198

§ 51. Effect of appeal upon contract. -

10199 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in 10200 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has 10201 been filed. 10202

§ 52. Stay of award during protest. -

10203 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event 10204 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided 10205 in § 54, no further action to award the contract shall be taken unless there is a written determination that 10206 proceeding without delay is necessary to protect the public interest or unless the bid or offer would 10207 expire.

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10208 § 53. Contractual disputes. -

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

10215 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 10216 Such procedure, which may be contained in the contract or may be specifically incorporated into the 10217 contract by reference and made available to the contractor, shall establish a time limit for a final 10218 decision in writing by the Institution. If the Institution has established administrative procedures meeting 10219 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically 10220 incorporated in the contract by reference and made available to the contractor. The Institution may 10221 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 10222 (ADR) as an administrative procedure.

10223 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
10224 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
10225 decision on the claim, unless the Institution fails to render such decision within the time specified in the
10226 contract.

10227 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
10228 six months of the date of the final decision on the claim by the Institution by invoking administrative
10229 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
10230 legal action as provided in § 54.

10231 § 54. Legal actions. -

10232 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from 10233 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 10234 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that 10235 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest 10236 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of 10237 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in 10238 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in 10239 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously 10240 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a 10241 responsible bidder, the court may direct the Institution to award the contract to such bidder in 10242 accordance with the requirements of this section and the Invitation to Bid.

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

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

10255 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 10256 of reasonable security to protect the Institution.

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

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

10266 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a **10267** contractor.

10268 § 55. Administrative appeals procedure. -

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10269 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 10270 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 10271 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 10272 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 10273 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a 10274 10275 written decision containing findings of fact. The disinterested person or panel shall not be an employee 10276 of the governmental entity against whom the claim has been filed. The findings of fact shall be final 10277 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) 10278 so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings 10279 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these 10280 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a 10281 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution 10282 Council in establishing an Alternative Dispute Resolution (ADR) procedure.

10283 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 10284 judicial review if such action is brought within 30 days of receipt of the written decision.

10285 § 56. Alternative dispute resolution. -

10286 The Institution may enter into agreements to submit disputes arising from contracts entered into 10287 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution 10288 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of 10289 Virginia, as applicable. 10290

§ 57. Ethics in public contracting. -

10291 The Institution and its governing body, officers and employees shall be governed by the Ethics in 10292 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of 10293 Chapter 43 of Title 2.2 of the Code of Virginia. 10294

ATTACHMENT 2

Memorandum of Agreement

The Commonwealth of Virginia and the University of Virginia

ERP/SciOuest Implementation with eVA

The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the 10299 10300 following:

10301 I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system 10302 (Oracle).

10303 II. Initially, all nonexempt orders produced by the ERP/SciOuest integration will be transmitted to 10304 eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format.

10305 Longer term a more real-time option may be mutually agreed by the Department of General 10306 Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between 10307 the ERP and eVA systems.

10308 III. The University may request that eVA contract vendors provide a version of their contract catalog 10309 for loading into ERP/SciOuest. Should the vendor indicate a preference to only provide its catalog 10310 through eVA, then the University will access these catalogs as described in item B8 of the Metrics 10311 section of this document. In any event, the University shall be responsible for payment of all eVA 10312 transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses 10313 to issue to unregistered and registered vendors through eVA.

10314 IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is 10315 understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from 10316 mandatory processing through eVA.

10317 V. In lieu of processing individual orders for requirements through eVA, a more efficient 10318 administrative approach is to establish a blanket or standing order. The University is authorized to use 10319 such an approach where it makes good business sense. The University will ensure vendors understand 10320 that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the 10321 transaction fee will be based on the total order amount, and the vendor is required to pay the total 10322 transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule 10323 specified in the order.

10324 VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting 10325 electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that 10326 10327 identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA 10328 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the 10329 eVA Business Plan as follows:

10330 A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the

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

10334 For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or CGI-AMS.

10341 The University further agrees that:

10342 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the 10343 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed 10344 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

10345 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) 10346 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

10347 3. In the event the University does not provide resolution notification to the eVA Business Manager
10348 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
10349 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

10350 VII. The University will not require separate vendor registrations as a prerequisite for responding to 10351 University solicitations. The University will participate in an enterprise workgroup to determine the best 10352 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 10353 information will be supported in eVA in such a way as to provide CoVA verified vendor information to 10354 entities. The University will have the option to receive a subset of vendor related data. Until an 10355 enterprise W-9 process is established, the University will be responsible for collection of W-9 10356 information.

10357 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.

10361 IX. Integration of the University's electronic procurement solution with the University's ERP is the
 10362 responsibility of the University. The solution must provide for orders, change orders and cancellations.
 10363 Guidelines

10364 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.

10366 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 810367 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

10368 3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data
10369 Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt
10370 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and
10371 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements
10372 for unregistered vendor orders.

10373 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA 10374 standard format.

10375 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

10376 6. eVA Interface standard does not currently support PCard orders; however these orders may be 10377 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.

- 10378 Schedule
- 10379 The University shall implement this agreement no later than December 2006.
- 10380 Metrics

10381 A. The University shall comply with the following Governor's eVA Management:

10382 Objective

10383 Ninety five Eighty percent of all nonexempt orders to be processed by eVA. Includes nonexempt
10384 orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For
10386 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by
10387 DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be
10388 reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

10389 B. The University shall meet the following management objectives for electronic procurement:

- **10390** 1. Provide end users, including purchase-card users, access to an electronic system for buying;
- **10391** 2. Conduct business with eVA registered vendors whenever possible;

10392	3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically
10393 10394	using eVA; 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar
10395	value, that include commodity codes, complete item descriptions, quantities, and unit prices;
10396	5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five
10397	(5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and
10398	unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the
10399 10400	number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent
10400	possible.
10402	The University agrees that, for confirming orders, it will resolve any vendor dispute, including
10403	disputes related to payment of eVA transaction fees, by working directly with the vendor whether such
10404	vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or
10405 10406	CGI-AMS. The University further agrees that:
10400	a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
10408	resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
10409	on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);
10410	b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
10411 10412	within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and c. In the event the University does not provide resolution notification to the eVA Business Manager
10412	(or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
10414	reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
10415	6. Timely process electronic change orders and cancellations;
10416 10417	7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as
10417	specifically exempted by DPS; 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
10419	end users using the ERP/SciQuest Integration system. The University will be responsible for the
10420	accuracy of contract catalog pricing loaded into the ERP/SciQuest;
10421	9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
10422 10423	solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 below);
10423	10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate
10425	commodities, when such are identified;
10426	11. Complete and certify the monthly eVA Dashboard Report; and
10427 10428	12. Timely remit any eVA transaction and non-use fees incurred by the institution. C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
10429	The University shall assure that payments to CGI-AMS are current.
10430	
10431	EXHIBIT R
10432 10433	MANAGEMENT AGREEMENT
10433	BETWEEN
10435	THE COMMONWEALTH OF VIRGINIA
10436	AND
10437	THE UNIVERSITY OF VIRGINIA
10438 10439	PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION
10439	FINANCIAL AND ADMINISTRATIVE OPERATIONS
10441	ACT OF 2005
10442	
10443	POLICY GOVERNING
10444 10445	FINANCIAL OPERATIONS AND MANAGEMENT
10446	THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
10447	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
10448	I. PREAMBLE.
10449 10450	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
10450	4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject

10452 additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

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10454 The following provisions of this Policy constitute the adopted Board of Visitors policies regarding 10455 the University of Virginia's financial operations and management.

10456 This Policy is intended to cover the authority that may be granted to the University pursuant to 10457 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act 10458 10459 and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers 10460 and authorities granted to the Medical Center by law, to the extent they exceed those granted to the 10461 University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.

II. DEFINITIONS. 10462

10463 As used in this policy, the following terms shall have the following meanings, unless the context 10464 requires otherwise:

10465 "Academic Division" means that part of the University known as (State Agency 207).

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, 10466 10467 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

10468 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia. "College" means that part of the University operated as the University of Virginia's College at Wise, 10469 10470 also known as (State Agency 246).

10471 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with 10472 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has 10473 entered into a Management Agreement with the Commonwealth to be governed by the provisions of 10474 Subchapter 3 of the Act.

10475 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of 10476 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions 10477 of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of 10478 the University of Virginia Medical Center.

"Effective Date" means the effective date of the initial Management Agreement between the 10479 10480 University and the Commonwealth.

10481 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act 10482 between the University and the Commonwealth of Virginia.

10483 "Medical Center" means that part of the University consisting of the University of Virginia Medical 10484 Center, known as (State Agency 209), and related health care and health maintenance facilities.

10485 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 10486 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from 10487 general government funds, as defined in the December 20, 2004 Report to the Governor and General 10488 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time. 10489 "University" means the University of Virginia, consisting of the Academic Division, the College, and 10490 the Medical Center.

10491 III. SCOPE OF POLICY.

10492 This Policy applies to the University's responsibility for management, investment and stewardship of 10493 all its financial resources, including but not limited to, general, non-general and private funds. This 10494 responsibility includes maintaining an independent uniform system of accounting, financial reporting, 10495 and internal controls adequate to protect and account for the University's financial resources.

10496 The University of Virginia's College at Wise shall receive the benefits of this Policy as it is 10497 implemented by the University on behalf of the College at Wise, but the College at Wise shall not 10498 receive any additional independent financial operations and management authority as a result of this 10499 Management Agreement beyond the independent financial operations and management authority that it 10500 had prior to the Effective Date of the University's initial Management Agreement with the 10501 Commonwealth or that it may be granted by law in the future.

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IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

10503 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the 10504 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation 10505 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant 10506 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution 10507 the duties and responsibilities set forth in this Policy to a person or persons within the University, who, 10508 while continuing to be fully accountable for such duties and responsibilities, may further delegate the 10509 implementation of those duties and responsibilities pursuant to the University's usual delegation policies 10510 and procedures. 10511

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

10512 The President, acting through the Executive Vice President and Chief Operating Officer, shall 10513 continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance 10514

10515 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting 10516 principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the University and the allocation and 10517 10518 utilization of resources within the accounting system, including the relevant guidance provided by the 10519 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and 10520 proper use of funds from specific types of fund sources, (iii) provide adequate risk management and 10521 internal controls to protect and safeguard all financial resources, including moneys transferred to the 10522 University pursuant to a general fund appropriation, and ensure compliance with the requirements of the 10523 Appropriation Act.

10524 The financial management system shall continue to include a financial reporting system to satisfy 10525 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 10526 as specified in the related State Comptroller's Directives, and the University's separately audited financial 10527 To ensure observance of limitations and restrictions placed on the use of the resources statements. 10528 available to the University, the accounting and bookkeeping system of the University shall continue to 10529 be maintained in accordance with the principles prescribed for governmental organizations by the 10530 Governmental Accounting Standards Board.

10531 In addition, the financial management system shall continue to provide financial reporting for the 10532 President, acting through the Executive Vice President and Chief Operating Officer, and the Board of 10533 Visitors to enable them to provide adequate oversight of the financial operations of the University. 10534 Upon the Effective Date of the initial Management Agreement between the University and the 10535 Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in 10536 Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing 10537 10538 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems 10539 that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The 10540 University's financial reporting system shall provide (i) summary monthly reports for State agencies 10541 including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the 10542 Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the 10543 Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the 10544 Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a 10545 sufficient level of detail, on such schedule, and using such format that is compatible with the 10546 Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such 10547 other special reports as may be requested from time to time.

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VI. FINANCIAL MANAGEMENT POLICIES.

10549 The President, acting through the Executive Vice President and Chief Operating Officer, shall create 10550 and implement any and all financial management policies necessary to establish a financial management 10551 system with adequate risk management and internal control processes and procedures for the effective 10552 protection and management of all University financial resources. Such policies will not address the 10553 underlying accounting principles and policies employed by the Commonwealth and the University, but 10554 rather will focus on the internal operations of the University's financial management. These policies shall 10555 include, but need not be limited to, the development of a tailored set of finance and accounting practices 10556 that seek to support the University's specific business and administrative operating environment in order 10557 to improve the efficiency and effectiveness of its business and administrative functions. In general, the 10558 system of independent financial management policies shall be guided by the general principles contained 10559 in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management 10560 and internal accounting controls to ensure University financial resources are properly safeguarded and 10561 that appropriate stewardship of public funds is obtained through management's oversight of the effective 10562 and efficient use of such funds in the performance of University programs.

10563 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the 10564 University shall continue to follow the Commonwealth's accounting policies until such time as specific 10565 alternate policies can be developed, approved and implemented. Such alternate policies shall include 10566 applicable accountability measures and shall be submitted to the State Comptroller for review and 10567 comment before they are implemented by the University. 10568

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

10569 Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the 10570 University shall have the power and authority to manage all monies received by it. All State general 10571 funds to be allocated to the University shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher 10572 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 10573 Assembly the degree to which each public institution of higher education of the Commonwealth has met 10574 10575 the financial and administrative management and educational-related performance benchmarks called for 10576 by that subsection and approved as part of the Appropriation Act then in effect for the State goals and

objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 10577 10578 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year 10579 for which the financial and administrative management and educational-related performance benchmarks 10580 described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal 10581 years thereafter, each public institution of higher education of the Commonwealth that (i) has been 10582 certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and 10583 (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain financial 10584 incentives, including interest on the tuition and fees and other non-general fund Educational and General 10585 Revenues deposited into the State Treasury by the public institution of higher education.

10586 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for 10587 which it has received such certification from SCHEV, the University is authorized to hold and invest 10588 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise 10589 funds, and all other non-general fund revenues subject to the following requirements:

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

10592 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section 10593 IX below.

10594 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall 10595 hold in escrow all interest earned on the University's tuition and fees and other non-general fund 10596 Educational and General Revenues. Interest earned on the escrow account shall be deposited to the 10597 account. Upon receipt of the required State Council of Higher Education for Virginia certification that 10598 the University has met such institutional performance benchmarks and the conditions prescribed in 10599 subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund 10600 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of 10601 10602 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If 10603 public institutions of higher education of the Commonwealth are permitted, or the University in 10604 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 10605 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall 10606 not apply to such interest on such funds, and such interest shall not be held in escrow.

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

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

10616 vi) On the first business day of the first fiscal year following the fiscal year for which it has
10617 received the required certification from SCHEV, the University may draw down all cash balances held
10618 by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
10619 programs, auxiliary enterprises, and all other non-general fund revenues.

10620 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay 10621 these funds to the University as specified in Section IX below.

10622 The University also shall have sum sufficient appropriation authority for all non-general funds as 10623 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 10624 10625 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 10626 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be 10627 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 10628 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the 10629 Department of Planning and Budget by July 31 of the subsequent fiscal year.

10630 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 10631 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 10632 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the 10633 intent of the Commonwealth and the University that the University shall be exempt from the revenue 10634 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, 10635 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from 10636 changes in Commonwealth rates and charges, including but not limited to health, life, and disability 10637

10638 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than 10639 reverting such savings back to the Commonwealth. This financial resource policy assists the University 10640 by providing the framework for retaining and managing non-general funds, for the receipt of general 10641 funds, and for the use and stewardship of all these funds.

10642 The President, acting through the Executive Vice President and Chief Operating Officer, shall 10643 continue to provide oversight of the University's cash management system which is the framework for 10644 the retention of non-general funds. The Internal Audit Department of the University shall periodically 10645 audit the University's cash management system in accordance with appropriate risk assessment models 10646 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional 10647 oversight shall continue to be provided through the annual audit and assessment of internal controls 10648 performed by the Auditor of Public Accounts.

For the receipt of general and non-general funds, the University shall conform to the Security for 10649 10650 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently 10651 exists and from time to time may be amended. 10652

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

10653 The President, through the Executive Vice President and Chief Operating Officer, shall continue to 10654 be authorized to create and implement any and all Accounts Receivable Management and Collection 10655 policies as part of a system for the management of University financial resources. The policies shall be 10656 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the 10657 Code of Virginia, such that the University shall take all appropriate and cost effective actions to 10658 aggressively collect accounts receivable in a timely manner.

10659 These shall include, but not be limited to, establishing the criteria for granting credit to University 10660 customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after 10661 10662 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 10663 collection activities for all University accounts receivable such as reporting delinquent accounts to credit 10664 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 10665 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's 10666 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the 10667 State Comptroller to implement such Programs, and shall provide a quarterly summary report of 10668 receivables to the Department of Accounts in accordance with the reporting procedures established 10669 pursuant to the Virginia Debt Collection Act. 10670

IX. DISBURSEMENT MANAGEMENT.

10671 The President, acting through the Executive Vice President and Chief Operating Officer, shall 10672 continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall 10673 10674 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the 10675 execution of the University's operations. These policies also shall continue to address the timing of 10676 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the 10677 appropriateness of certain goods or services relative to the University's mission, including travel-related 10678 disbursements. Further, the University's disbursement policy shall continue to provide for the 10679 mechanisms by which payments are made including the use of charge cards, warrants, and electronic 10680 payments. Since the University no longer will interface to the CARS system or any replacement for the 10681 CARS system for disbursements, the University shall establish its own mechanisms for electronic 10682 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the 10683 Commonwealth's Debt Set-Off Collection Programs.

10684 Beginning with the fiscal year after the first fiscal year for which it first receives the required 10685 certification from SCHEV, the University may draw down its general fund appropriations (subject to 10686 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. 10687 Such funds shall be available to the University for disbursement as provided in the then-current rules of 10688 the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in 10689 accordance with the following schedule:

10690 i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation 10691 for Educational and General programs on or about the first and fifteenth days of each month with 10692 adjustments as needed to meet short-term cash requirements associated with the Commonwealth's bimonthly pay dates, and up to 50% of its annual general fund appropriation for Student Financial 10693 10694 Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after 10695 February 1 of each year in order to meet student obligations;

10696 The University may draw down the sum of all tuition and E&G fees and all other non-general ii) 10697 revenues deposited to the State Treasury each day on the same business day they were deposited; and

10698 iii) The University anticipates that expenditures could exceed available revenues from time to time 10699 during the year if the above disbursement schedule is used. When the University projects a cash deficit

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10700 is likely in activities supported by general fund appropriations, the University may make a request to the 10701 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in 10702 a form and within a timeframe agreeable to the parties, in order to cover expenditures.

10703 These disbursement policies shall authorize the President, acting through the Executive Vice 10704 President and Chief Operating Officer, to independently select, engage, and contract for such consultants, 10705 accountants, and financial experts, and other such providers of expert advice and consultation, and, after 10706 consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable 10707 in his or her discretion. The policies also shall continue to include the ability to locally manage and 10708 administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject 10709 to any restrictions contained in the Commonwealth's contracts governing those programs, provided that 10710 the University shall submit the credit card and cost recovery aspects of its financial and operations 10711 policies to the State Comptroller for review and comment prior to implementing those aspects of those 10712 policies. The disbursement policies shall ensure that adequate risk management and internal control 10713 procedures shall be maintained over previously decentralized processes for public records, payroll, and 10714 non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment 10715 reports to the Department of Accounts in accordance with the reporting procedures established pursuant 10716 to the Prompt Payment Act.

10717 The University's disbursement policies shall be guided by the principles of the Commonwealth's 10718 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the 10719 Effective Date of its initial Management Agreement with the Commonwealth, the University shall 10720 continue to follow the Commonwealth's disbursement policies until such time as specific alternative 10721 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the 10722 State Comptroller for review and comment prior to their implementation by the University.

10723 X. DEBT MANAGEMENT.

10724 The President, acting through the Executive Vice President and Chief Operating Officer, shall 10725 continue to be authorized to create and implement any and all debt management policies as part of a 10726 system for the management of University financial resources.

10727 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes, 10728 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury 10729 Board, and that are consistent with debt capacity and management policies and guidelines established by 10730 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, 10731 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any 10732 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided 10733 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 10734 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised 10735 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 10736 comment prior to its adoption by the University.

10737 The University recognizes that there are numerous types of financing structures and funding sources 10738 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 10739 the President, acting through the Executive Vice President and Chief Operating Officer, within the 10740 context of the overall portfolio to ensure that any financial product or structure is consistent with the 10741 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the 10742 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a 10743 full understanding of the transaction, including (i) the identification of potential risks and benefits, and 10744 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or 10745 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be 10746 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

10747 The University currently has established guidelines relating to the total permissible amount of 10748 outstanding debt by monitoring University-wide ratios that measure debt compared to University balance-sheet resources and annual debt service burden. These measures are monitored and reviewed 10749 10750 regularly in light of the University's current strategic initiatives and expected debt requirements. The 10751 Board of Visitors shall periodically review and approve the University's debt capacity and debt 10752 management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of 10753 Virginia for review and comment prior to their adoption by the University.

XI. INVESTMENT POLICY.

10754 10755 It is the policy of the University to invest its operating and reserve funds solely in the interest of the 10756 University and in a manner that will provide the highest investment return with the maximum security 10757 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act 10758 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence 10759 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and 10760 familiar with such matters would use in the conduct of an enterprise of a like character and with like

10761 aims.

10762 Endowment investments shall be invested and managed in accordance with the Uniform Management 10763 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

10764 The Board of Visitors shall periodically review and approve the investment guidelines governing the 10765 University's operating and reserve funds.

10766 XII. INSURANCE AND RISK MANAGEMENT.

10767 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made 10768 10769 available to the University through the Commonwealth's Division of Risk Management and in which the 10770 University is then participating, to enable the Commonwealth to complete an adverse selection analysis 10771 of any such decision and to determine the additional costs to the Commonwealth that would result from 10772 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University 10773 proceeds to withdraw from the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the 10774 10775 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University 10776 and the Commonwealth.

10777 5. That the provisions of the first, second, and third enactments of this Act shall expire at midnight 10778 on June 30, 20102012, provided that on or before November 15, 2011, the Governor provides to the 10779 Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written 10780 notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015. The expiration of 10781 10782 such enactments shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The 10783 College of William and Mary in Virginia, and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and incorporated into this Act. 10784 10785

10786 3. That § 4.3, Attachment 1 of Exhibit D, and Exhibit F of the first enactment, and the third 10787 enactment of Chapter 594 of the Acts of Assembly of 2008 are amended and reenacted as follows:

10788 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 10789 30, 2012, provided that on or before November 15, 2011, the Governor provides to the Chairmen of the 10790 House Committee on Appropriations and the Senate Committee on Finance written notification that this 10791 Management Agreement needs to be renegotiated or revised. If such notification is not received, this 10792 Management Agreement shall continue in effect until June 30, 2015.

ATTACHMENT 1

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

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

Governed by Subchapter 3 of the

Restructured Higher Education Financial and Administrative Operations Act,

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

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10800 In accordance with the provisions of the Restructured Higher Education Financial and Administrative 10801 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the 10802 10803 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth 10804 pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, 10805 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and 10806

construction by the Institution:

§ 1. Purpose.

The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods, 10808 10809 services, insurance, and construction by the Institution from nongovernmental sources, to include 10810 governmental procurement that may or may not result in monetary consideration for either party. These 10811 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the 10812 Institution, the contractor, or some third party is providing the consideration. 10813

§ 2. Scope of Procurement Authority.

10814 Subject to these Rules, and the Institution's continued substantial compliance with the terms and 10815 conditions of its Management Agreement with the Commonwealth pursuant to subdivision D 4 of § 23-38.88 and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be 10816 10817 authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, 10818 and construction, including but not limited to capital outlay-related procurement and information 10819 technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of 10820 the Restructuring Act.

10821 § 3. Competition is the Priority.

10822 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all 10823 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any 10824 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's 10825 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body 10826 of the Institution that competition be sought to the maximum feasible degree, that procurement 10827 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad 10828 flexibility in fashioning details of such competition, that the rules governing contract awards be made 10829 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing 10830 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely 10831 exchange information concerning what is sought to be procured and what is offered. The Institution may 10832 consider best value concepts when procuring goods and nonprofessional services, but not construction or 10833 professional services. Professional services will be procured using a qualification-based selection process. 10834 The criteria, factors, and basis for consideration of best value and the process for the consideration of 10835 best value shall be as stated in the procurement solicitation.

10836 § 4. Definitions.

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As used in these Rules:

10838 "Affiliate" means an individual or business that controls, is controlled by, or is under common 10839 control with another individual or business. A person controls an entity if the person owns, directly or 10840 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition 10841 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 10842 members of the board of directors or similar governing body of the business or (ii) is convertible into, 10843 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 10844 partnership interest shall be deemed to be a voting security.

10845 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 10846 and various elements of required services that in total are optimal relative to the Institution's needs.

10847 "Business" means any type of corporation, partnership, limited liability company, association, or sole 10848 proprietorship operated for profit. 10849

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

10850 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 10851 procured, specifying the factors that will be used in evaluating the proposal and containing or 10852 incorporating by reference the other applicable contractual terms and conditions, including any unique 10853 capabilities or qualifications that will be required of the contractor.

10854 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 10855 proposals by publication in a newspaper or newspapers of general circulation in the area in which the 10856 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 10857 can be reasonably anticipated to submit proposals in response to the particular request. Public notice also 10858 shall be published on the Department of General Services' central electronic procurement website and 10859 may be published on other appropriate websites. In addition, proposals may be solicited directly from 10860 potential contractors.

10861 3. a. Procurement of professional services. The procurement of professional services for capital 10862 projects shall be conducted using a qualification-based selection process. The Institution shall engage in 10863 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 10864 basis of initial responses and with emphasis on professional competence, to provide the required 10865 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 10866 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, 10867 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors 10868 furnish estimates of man-hours or costs for services. At the discussion stage, the Institution may discuss 10869 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where 10870 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors 10871 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this 10872 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information 10873 developed in the selection process to this point, the Institution shall select in the order of preference two 10874 or more offerors whose professional qualifications and proposed services are deemed most meritorious. 10875 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory 10876 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the 10877 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be 10878 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a 10879 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and 10880 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly 10881 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to 10882 that offeror.

10883 A contract for architectural or professional engineering services relating to construction projects may HB2464H1

10884 be negotiated by the Institution for multiple projects provided (i) the projects require similar experience 10885 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 10886 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 10887 each project performed; (b) the sum of all projects performed in one contract term shall be as set in the 10888Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 10889 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 10890 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 10891 Request for Proposal stated the potential for a multi-vendor award.

10892 Multiphase professional services contracts satisfactory and advantageous to the Institution for 10893 environmental, location, design and inspection work regarding construction of infrastructure projects may 10894 be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, 10895 when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the 10896 10897 Institution shall state the anticipated intended total scope of the project and determine in writing that the 10898 nature of the work is such that the best interests of such Institution require awarding the contract.

10899 b. Procurement of other than professional services. Selection shall be made of two or more offerors 10900 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 10901 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 10902 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but 10903 need not be the sole determining factor. After negotiations have been conducted with each offeror so 10904 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 10905 shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the 10906 Institution determine in writing and in its sole discretion that only one offeror has made the best 10907 10908 proposal, a contract may be negotiated and awarded to that offeror.

10909 "Competitive sealed bidding" is a method of contractor selection, other than for professional services, 10910 which includes the following elements:

10911 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 10912 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 10913 10914 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 10915 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of 10916 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been 10917 qualified under the criteria set forth in the first solicitation.

10918 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 10919 publication on the Department of General Services' central electronic procurement website. Public notice 10920 also may be published in a newspaper of general circulation or on other appropriate websites, or both. In 10921 addition, bids may be solicited directly from potential contractors. Any additional solicitations shall 10922 include businesses selected from a list made available by the Department of Minority Business 10923 Enterprise. 10924

3. Public opening and announcement of all bids received.

10925 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 10926 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 10927 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which 10928 are helpful in determining acceptability.

10929 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple 10930 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

10931 "Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. "Construction management contract" means a contract in which a party is retained by the owner to 10932

10933 10934 coordinate and administer contracts for construction services for the benefit of the owner, and may also 10935 include, if provided in the contract, the furnishing of construction services to the owner.

10936 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 10937 agreement with the Commonwealth of Virginia, a public institution of higher education of the 10938 Commonwealth that has entered into a management agreement with the Commonwealth to be governed 10939 by the provisions of Subchapter 3 of the Restructuring Act.

10940 "Design-build contract" means a contract between the Institution and another party in which the party 10941 contracting with the Institution agrees to both design and build the structure, roadway or other item 10942 specified in the contract.

10943 "Goods" means all material, equipment, supplies, and printing, including information technology and 10944 telecommunications goods such as automated data processing hardware and software.

10945 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of

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10946 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or 10947 delivery schedule for the goods, services or construction being procured.

10948 "Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be 10949 10950 specified without the results of the first or prior phase of the contract.

10951 "Nonprofessional services" means any services not specifically identified as professional services in 10952 the definition of professional services and includes small construction projects valued not over \$1 10953 million; provided that subdivision 3 a of the definition of "competitive negotiation" in this section shall 10954 still apply to professional services for such small construction projects.

10955 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at 10956 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or 10957 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the 10958 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who 10959 would have been eligible and qualified to submit a bid or proposal had the contract been procured 10960 through competitive sealed bidding or competitive negotiation.

10961 "Professional services" means work performed by an independent contractor within the scope of the 10962 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 10963 dentistry, medicine, optometry, pharmacy or professional engineering.

10964 "Public body" means any legislative, executive or judicial body, agency, office, department, authority, 10965 post, commission, committee, institution, board or political subdivision created by law to exercise some 10966 sovereign power or to perform some governmental duty, and empowered by law to undertake the 10967 activities described in these Rules.

"Public contract" means an agreement between the Institution and a nongovernmental source that is 10968 10969 enforceable in a court of law.

10970 "Responsible bidder" or "responsible offeror" means a person who has the capability, in all respects, 10971 to perform fully the contract requirements and the moral and business integrity and reliability that will 10972 assure good faith performance, and who has been prequalified, if required.

10973 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects 10974 to the Invitation to Bid.

"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative 10975 10976 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

10977 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified 10978 goods or nonprofessional services through real-time electronic bidding, with the award being made to 10979 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 10980 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 10981 established for bid opening.

10982 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction 10983 adopted by the governing body of the Covered Institution.

10984 "Services" means any work performed by an independent contractor wherein the service rendered 10985 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials 10986 and supplies.

10987 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working 10988 environment and individual goals that utilizes work experience and related services for assisting the 10989 handicapped person to progress toward normal living and a productive vocational status.

10990 § 5. Methods of procurement.

10991 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 10992 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or 10993 competitive negotiation as provided in this section, unless otherwise authorized by law.

10994 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 10995 shall be used for design services. 10996

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

10997 D. Construction may be procured only by competitive sealed bidding, except that competitive 10998 negotiation may be used in the following instances upon a determination made in advance by the 10999 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally 11000 advantageous to the public, which writing shall document the basis for this determination:

11001 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

11002 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or

11003 3. By the Institution for the construction of highways and any draining, dredging, excavation, grading 11004 or similar work upon real property.

11005 E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed 11006

11007 bidding or competitive negotiation. The writing shall document the basis for this determination. The 11008 Institution shall issue a written notice stating that only one source was determined to be practicably 11009 available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may 11010 be the Department of General Services' website for the Commonwealth's central electronic procurement 11011 11012 system, or published in a newspaper of general circulation on the day the Institution awards or 11013 announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic 11014 11015 procurement system and may be published on other appropriate websites.

11016 F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is 11017 11018 practicable under the circumstances. A written determination of the basis for the emergency and for the 11019 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 11020 written notice stating that the contract is being awarded on an emergency basis, and identifying that 11021 which is being procured, the contractor selected, and the date on which the contract was or will be 11022 awarded. This notice shall be posted in a designated public area, which may be the Department of 11023 General Services' website for the Commonwealth's central electronic procurement system, or published 11024 in a newspaper of general circulation on the day the Institution awards or announces its decision to 11025 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also 11026 be published on the Department of General Services' website for the Commonwealth's central electronic 11027 procurement system and other appropriate websites.

11028 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 11029 sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; 11030 11031 however, such small purchase procedures shall provide for competition wherever practicable.

H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 11032 11033 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases 11034 is not expected to exceed \$50,000; however such small purchase procedures shall provide for 11035 competition wherever practicable.

I. Upon a determination made in advance by the Institution and set forth in writing that the purchase 11036 of goods, products or commodities from a public auction sale is in the best interests of the public, such 11037 11038 items may be purchased at the auction, including online public auctions. The writing shall document the 11039 basis for this determination.

11040 J. The purchase of goods or nonprofessional services, but not construction or professional services, 11041 may be made by reverse auctioning. 11042

§ 6. Cooperative procurement.

11043 A. In circumstances where the Institution determines and documents that statewide contracts for 11044 goods and services, including information technology and telecommunications goods and services, do not 11045 provide goods and services to the Institution that meet its business goals and objectives, the Institution is 11046 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on 11047 behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, 11048 11049 health care provider alliances or purchasing organizations or entities, or with public agencies or 11050 institutions or group purchasing organizations of the several states, territories of the United States, or the 11051 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The 11052 11053 Institution may purchase from any authority, department, agency, institution, city, county, town, or other 11054 political subdivision of the Commonwealth's contract even if it did not participate in the request for 11055 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the 11056 procurement was being conducted on behalf of other public bodies. In such instances, deviation from the 11057 procurement procedures set forth in these Rules and the administrative policies and procedures 11058 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of 11059 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic 11060 procurement system, including the requirement for payment of applicable fees. Nothing herein shall 11061 prohibit the payment by direct or indirect means of any administrative fee that will allow for 11062 participation in any such arrangement.

11063 B. In circumstances where statewide contracts for goods and services, including information 11064 technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and 11065 11066 consistent with applicable federal regulations, and provided the terms of the contract permit such 11067 purchases: 11068

1. The Institution may purchase goods and nonprofessional services, from a United States General

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11069 Services Administration contract or a contract awarded by any other agency of the United States 11070 government; and

11071 2. The Institution may purchase telecommunications and information technology goods and 11072 nonprofessional services from a United States General Services Administration contract or a contract 11073 awarded by any other agency of the United States government.

11074 § 7. Design-build or construction management contracts authorized.

11075 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed 11076 price design-build basis or construction management basis in accordance with the provisions of this 11077 section.

11078 B. Procurement of construction by the design-build or construction management method shall be a 11079 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 11080 qualifications. Based upon the information submitted and any other relevant information which the 11081 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 11082 selected by the Commonwealth and requested to submit proposals.

§ 8. Modification of the contract.

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11084 A. A contract awarded by the Institution may include provisions for modification of the contract 11085 during performance, but no fixed-price contract may be increased by more than 25 percent of the 11086 amount of the contract or \$50,000, whichever is greater, without the advance written approval of the 11087 Institution's president or his designee. In no event may the amount of any contract, without adequate 11088 consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the 11089 consequences of an error in its bid or offer.

11090 B. The Institution may extend the term of an existing contract for services to allow completion of 11091 any work undertaken but not completed during the original term of the contract.

11092 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 11093 modifications. 11094

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

11095 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis 11096 11097 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 11098 Institution shall include businesses selected from a list made available by the Department of Minority 11099 Business Enterprise.

11100 B. The Institution shall establish programs consistent with this section to facilitate the participation of 11101 small businesses and businesses owned by women and minorities in procurement transactions. The 11102 programs established shall be in writing and shall include cooperation with the Department of Minority 11103 Business Enterprise, the United States Small Business Administration, and other public or private 11104 agencies. The Institution shall submit annual progress reports on minority business procurement to the 11105 Department of Minority Business Enterprise.

11106 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 11107 analysis that documents a statistically significant disparity between the availability and utilization of 11108 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 11109 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 11110 law.

11111 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 11112 11113 that employing ex-offenders on the specific contract is not in its best interest. 11114

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

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

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

11117 a. The contractor will not discriminate against any employee or applicant for employment because of 11118 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to 11119 discrimination in employment, except where there is a bona fide occupational qualification reasonably 11120 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, 11121 available to employees and applicants for employment, notices setting forth the provisions of this 11122 nondiscrimination clause.

11123 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 11124 contractor, will state that such contractor is an equal opportunity employer.

11125 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 11126 shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every 11127 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each 11128 11129 subcontractor or vendor.

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11130 § 11. Drug-free workplace to be maintained by contractor; required contract provisions.

11131 The Institution shall include in every contract over \$10,000 the following provisions:

11132 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace 11133 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 11134 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 11135 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 11136 workplace and specifying the actions that will be taken against employees for violations of such 11137 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 11138 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 11139 11140 binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work 11141 11142 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 11143 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 11144 dispensation, possession or use of any controlled substance or marijuana during the performance of the 11145 contract.

§ 12. Use of brand names.

11147 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or 11148 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be 11149 deemed to convey the general style, type, character, and quality of the article desired. Any article that 11150 the Institution in its sole discretion determines to be the equal of that specified, considering quality, 11151 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. 11152

§ 13. Comments concerning specifications.

The Institution shall establish procedures whereby comments concerning specifications or other 11153 11154 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the 11155 time set for receipt of bids or proposals or award of the contract. 11156

§ 14. Prequalification generally; prequalification for construction.

11157 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or 11158 construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its 11159 implementation to allow potential contractors a fair opportunity to complete the process. 11160

11161 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be 11162 consistent with the provisions of this section. 11163

The application form used in such process shall set forth the criteria upon which the qualifications of 11164 11165 prospective contractors will be evaluated. The application form shall request of prospective contractors 11166 only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to 11167 request, by checking the appropriate box, that all information voluntarily submitted by the contractor 11168 11169 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the 11170 provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for 11171 11172 construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set 11173 11174 for the submission of bids for such construction so as to allow the procedures set forth in this subsection 11175 to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the 11176 11177 procurement of the contract for which the prequalification applies, the Institution shall advise in writing 11178 each contractor who submitted an application whether that contractor has been prequalified. In the event 11179 that a contractor is denied prequalification, the written notification to the contractor shall state the 11180 reasons for the denial of prequalification and the factual basis of such reasons.

11181 A decision by the Institution denying prequalification under the provisions of this subsection shall be 11182 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

11183 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the 11184 following:

11185 1. The contractor does not have sufficient financial ability to perform the contract that would result 11186 from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of 11187 11188 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to 11189 establish the financial ability of the contractor to perform the contract resulting from such procurement;

11190 2. The contractor does not have appropriate experience to perform the construction project in 11191 question;

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11192 3. The contractor or any officer, director or owner thereof has had judgments entered against him 11193 within the past 10 years for the breach of contracts for governmental or nongovernmental construction, 11194 including, but not limited to, design-build or construction management;

11195 4. The contractor has been in substantial noncompliance with the terms and conditions of prior 11196 construction contracts with the Institution without good cause. If the Institution has not contracted with a 11197 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor 11198 has been in substantial noncompliance with the terms and conditions of comparable construction 11199 contracts with another public body without good cause. The Institution may not utilize this provision to 11200 deny pregualification unless the facts underlying such substantial noncompliance were documented in 11201 writing in the prior construction project file and such information relating thereto given to the contractor 11202 at that time, with the opportunity to respond;

11203 5. The contractor or any officer, director, owner, project manager, procurement manager or chief 11204 financial official thereof has been convicted within the past 10 years of a crime related to governmental 11205 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 11206 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental 11207 Frauds Act (§ 18.2-498.1 et seq.) of the Code of Virginia, (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 11208 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;

11209 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an 11210 established debarment procedure from bidding or contracting by any public body, agency of another 11211 state or agency of the federal government;

11212 7. The contractor failed to provide to the Institution in a timely manner any information requested by 11213 the Institution relevant to subdivisions 1 through 6 of this subsection. 11214

§ 15. Negotiation with lowest responsible bidder.

11215 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as 11216 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the 11217 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. 11218 However, the negotiation may be undertaken only under conditions and procedures described in writing 11219 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein. 11220

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

11221 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or 11222 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 11223 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 11224 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 11225 particular responsive and responsible bidder or offeror. 11226

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited.

11228 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance 11229 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be 11230 excluded from presenting an insurance bid proposal to the Institution in response to a request for 11231 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a 11232 prospective insurer pursuant to § 18. 11233

§ 18. Debarment.

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11234 Prospective contractors may be debarred from contracting for particular types of supplies, services, 11235 insurance or construction, for specified periods of time. Any debarment procedure shall be established in 11236 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a 11237 contractor's unsatisfactory performance for the Institution. 11238

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

11239 A. The Institution may implement a purchase program for recycled goods and may coordinate its 11240 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules. 11241

11242 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets 11243 Development Council, shall advise the Institution concerning the designation of recycled goods. 11244

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

11245 A. In the case of a tie bid, preference shall be given to goods produced in Virginia and goods or 11246 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 11247 decided by lot.

11248 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 11249 resident contractor of that state a preference, a like preference may be allowed by the Institution to the 11250 lowest responsive and responsible bidder who is a resident of Virginia.

11251 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where 11252 goods are being offered, and existing price preferences have already been taken into account, preference

11253 shall be given to the bidder whose goods contain the greatest amount of recycled content.

11254 § 21. Preference for Virginia coal used in the Institution.

11255 In determining the award of any contract for coal to be purchased for use in the Institution with state 11256 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest 11257 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more 11258 than 4 percent greater than the bid price of the lowest responsive and responsible bidder offering coal 11259 mined elsewhere. 11260

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

11261 A. In determining the award of any contract for paper and paper products to be purchased for use by 11262 the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for 11263 the purpose intended, so long as the price is not more than 10 percent greater than the price of the lowest responsive and responsible bidder or offeror offering a product that does not qualify under 11264 11265 subsection B.

11266 B. For purposes of this section, recycled paper and paper products means any paper or paper 11267 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247. 11268

§ 23. Withdrawal of bid due to error.

11269 A. A bidder for a public construction contract, other than a contract for construction or maintenance 11270 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 11271 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 11272 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 11273 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made 11274 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can 11275 be clearly shown by objective evidence drawn from inspection of original work papers, documents and 11276 materials used in the preparation of the bid sought to be withdrawn.

11277 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the 11278 11279 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 11280 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 11281 objective evidence drawn from inspection of original work papers, documents and materials used in the 11282 preparation of the bid sought to be withdrawn.

11283 One of the following procedures for withdrawal of a bid shall be selected by the Institution and 11284 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 11285 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 11286 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid 11287 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 11288 11289 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 11290 instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 11291 11292 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 11293 shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 11294 11295 period has elapsed. The mistake shall be proved only from the original work papers, documents and 11296 materials delivered as required herein.

11297 B. The Institution may establish procedures for the withdrawal of bids for other than construction 11298 contracts.

11299 C. No bid shall be withdrawn under this section when the result would be the awarding of the 11300 contract on another bid of the same bidder or of another bidder in which the ownership of the 11301 withdrawing bidder is more than 5 percent.

11302 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to 11303 be the low bid.

11304 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or 11305 labor to or perform any subcontract or other work agreement for the person or firm to whom the 11306 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for 11307 which the withdrawn bid was submitted.

11308 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 11309 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid 11310 price, provided such bidder is a responsible and responsive bidder. 11311

§ 24. Contract Pricing Arrangements.

A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other 11312 11313 basis that is not prohibited by these Rules.

11314 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall

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11315 be awarded on the basis of cost plus a percentage of cost.

11316 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of 11317 claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or 11318 part as a percentage of such claims, shall not be prohibited by this section. 11319

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

11320 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has 11321 obtained, and continues to maintain for the duration of the work, workers' compensation coverage 11322 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 11323 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 11324 evidence of such coverage.

11325 B. The Department of General Services shall provide the form to the Institution. Failure of the 11326 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 11327 of subsection A.

11328 C. No subcontractor shall perform any work on a construction project of the Institution unless he has 11329 obtained, and continues to maintain for the duration of such work, workers' compensation coverage 11330 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 11331 Virginia. 11332

§ 26. Retainage on construction contracts.

11333 A. In any contract issued by the Institution for construction that provides for progress payments in 11334 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95 11335 percent of the earned sum when payment is due, with no more than 5 percent being retained to ensure 11336 faithful performance of the contract. All amounts withheld may be included in the final payment.

11337 B. Any subcontract for a public project that provides for similar progress payments shall be subject 11338 to the provisions of this section.

11339 § 27. Public construction contract provisions barring damages for unreasonable delays declared void. A. Any provision contained in any public construction contract of the Institution that purports to

11340 11341 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable 11342 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the 11343 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to 11344 causes within their control shall be void and unenforceable as against public policy.

11345 B. Subsection A shall not be construed to render void any provision of a public construction contract 11346 awarded by the Institution that:

11347 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the 11348 contractor, or its subcontractors, agents or employees;

11349 2. Requires notice of any delay by the party claiming the delay; 11350

3. Provides for liquidated damages for delay; or

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

11352 C. A contractor making a claim against the Institution for costs or damages due to the alleged 11353 delaying of the contractor in the performance of its work under any public construction contract of the 11354 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the 11355 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage 11356 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation 11357 or arbitration to be false or to have no basis in law or in fact.

11358 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 11359 the contractor in the performance of work under any public construction contract for the Institution, it 11360 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to 11361 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 11362 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 11363 determined through litigation or arbitration to have been made in bad faith. 11364

§ 28. Bid bonds.

11351

11365 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 11366 million shall be accompanied by a bid bond from a surety company selected by the bidder that is 11367 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will 11368 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 11369 5 percent of the amount bid.

11370 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for 11371 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

11372 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 11373 or proposals for construction contracts anticipated to be less than \$1 million.

11374 § 29. Performance and payment bonds.

11375 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million 11394

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awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to 11376 11377 any prime contractor requiring the performance of labor or the furnishing of materials for buildings, 11378 structures or other improvements to real property owned by the Institution, the contractor shall furnish to 11379 the Institution the following bonds:

11380 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 11381 conditioned upon the faithful performance of the contract in strict conformity with the plans, 11382 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a 11383 form and amount satisfactory to the Institution.

11384 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of 11385 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom 11386 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied 11387 11388 or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but 11389 only for periods when the equipment rented is actually used at the site. 11390

11391 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 11392 that are authorized to do business in Virginia. 11393

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

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

11395 E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds 11396 for construction contracts below \$1 million.

11397 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a 11398 payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor 11399 conditioned upon the payment to all persons who have and fulfill contracts that are directly with the 11400 subcontractor for performing labor and furnishing materials in the prosecution of the work provided for 11401 in the subcontract. 11402

§ 30. Alternative forms of security.

11403 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 11404 escrow in the face amount required for the bond.

11405 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the 11406 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 11407 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 11408 be granted only upon a determination that the alternative form of security proffered affords protection to 11409 the Institution equivalent to a corporate surety's bond. 11410

§ 31. Bonds on other than construction contracts.

11411 The Institution may require bid, payment, or performance bonds for contracts for goods or services if 11412 provided in the Invitation to Bid or Request for Proposal.

11413 § 32. Action on performance bond.

11414 No action against the surety on a performance bond shall be brought by the Institution unless 11415 brought within one year after (i) completion of the contract, including the expiration of all warranties 11416 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action. 11417

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

11418 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 11419 material in accordance with the contract documents in furtherance of the work provided in any contract 11420 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the 11421 11422 materials for which he claims payment, may bring an action on the payment bond to recover any 11423 amount due him for the labor or material. The obligee named in the bond need not be named a party to 11424 the action.

11425 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 11426 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's 11427 payment bond only if he has given written notice to the contractor within 180 days from the day on 11428 which the claimant performed the last of the labor or furnished the last of the materials for which he 11429 claims payment, stating with substantial accuracy the amount claimed and the name of the person for 11430 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be 11431 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at 11432 any place where his office is regularly maintained for the transaction of business. Claims for sums 11433 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the 11434 time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the 11435 11436 person bringing such action last performed labor or last furnished or supplied materials.

11437 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless

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11438 it is in writing, signed by the person whose right is waived, and executed after such person has 11439 performed labor or furnished material in accordance with the contract documents.

11440 § 34. Public inspection of certain records.

11441 A. Except as provided in this section, all proceedings, records, contracts and other public records 11442 relating to procurement transactions shall be open to the inspection of any citizen, or any interested 11443 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et 11444 seq.).

11445 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 11446 shall not be open to public inspection.

11447 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 11448 bid records within a reasonable time after the opening of all bids but prior to award, except in the event 11449 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid 11450 records shall be open to public inspection only after award of the contract.

11451 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are 11452 11453 completed but prior to award, except in the event that the Institution decides not to accept any of the 11454 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only 11455 after award of the contract.

11456 E. Any inspection of procurement transaction records under this section shall be subject to reasonable 11457 restrictions to ensure the security and integrity of the records.

11458 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection 11459 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 11460 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission 11461 11462 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the 11463 reasons why protection is necessary.

§ 35. Exemption for certain transactions.

11464 11465

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

11466 1. The selection of services related to the management and investment of the Institution's endowment 11467 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be 11468 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by 11469 § 23-76.1.

11470 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the 11471 Institution. However, such purchase procedures shall provide for competition where practicable.

11472 3. Procurement of any construction or planning and design services for construction by the Institution 11473 when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to 11474 conform to procurement procedures that are established by federal statutes or regulations, whether or not 11475 those federal procedures are in conformance with the provisions of these Rules.

4. The purchase of goods and services by the Institution when such purchases are made under a 11476 11477 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

11478 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 11479 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 11480 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 11481 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 11482 of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of 11483 11484 these Rules in conflict with the conditions of the grant or contract. 11485

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

11486 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into 11487 contracts with faith-based organizations for the purposes described in this section on the same basis as 11488 any other nongovernmental source without impairing the religious character of such organization, and 11489 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

11490 B. For the purposes of this section, "faith-based organization" means a religious organization that is 11491 or applies to be a contractor to provide goods or services for programs funded by the block grant 11492 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 11493 104-193.

11494 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this 11495 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 11496 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 11497 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of 11498 religious freedom by the recipients of such goods, services, or disbursements.

11499 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and 11500 purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations. 11501

11502 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any 11503 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on 11504 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 11505 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other 11506 organizations that contract with public bodies to account for the use of the funds provided; however, if 11507 the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) 11508 11509 shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 11510 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent 11511 11512 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to 11513 expenditures pursuant to contracts, if any, for the services of chaplains.

11514 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization 11515 11516 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular 11517 religion.

11518 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 11519 to a contract between the Institution and a faith-based organization, objects to the religious character of 11520 the faith-based organization from which the individual receives or would receive the goods, services, or 11521 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 11522 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

11523 The Institution shall provide to each individual who applies for or receives goods, services, or 11524 disbursements provided pursuant to a contract between the Institution and a faith-based organization a 11525 notice in **bold** face type that states: "Neither the Institution's selection of a charitable or faith-based 11526 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 11527 charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a 11528 11529 religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please 11530 11531 discuss the complaint with your provider or notify the appropriate person as indicated in this form. 11532

§ 37. Exemptions from competition for certain transactions.

11533 The Institution may enter into contracts without competition, as that term is described in subsections 11534 A through J of § 5 (Methods of procurement) of these Rules, for:

1. The purchase of goods or services that are produced or performed by or related to: 11535

11536 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; 11537

11538 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported 11539 employment services serving the handicapped;

- 11540 c. Private educational institutions: or
- 11541 d. Other public educational institutions.
- 11542 2. Speakers and performing artists;
- 11543 3. Memberships and Association dues;

11544 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 11545 goods or services by the Institution;

- 11546 5. Group travel in foreign countries;
- 11547 6. Conference facilities and services;

11548 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, 11549 registration and tournament fees; 11550

8. Royalties; or

11551 9. The purchase of legal services, provided that the Office of the Attorney General has been 11552 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

11553 10. Maintenance contract renewals for scientific research equipment and software, provided that the 11554 institutions has posted the renewal to eVa and documented that there was only one response or less and such documentation includes a statement signed by the buyer indicating that no firm other than the 11555 11556 original manufacturer/developer offers the service.

11557 38. Exemptions from competitive sealed bidding and competitive negotiation for certain 11558 transactions: limitations.

11559 The Institution may enter into contracts for insurance or electric utility service without competitive 11560 sealed bidding or competitive negotiation if purchased through an association of which the Institution is

11561 a member if the association was formed and is maintained for the purpose of promoting the interest and 11562 welfare of and developing close relationships with similar public bodies, provided such association has 11563 procured the insurance or electric utility services by use of competitive principles and provided that the 11564 Institution has made a determination in advance after reasonable notice to the public and set forth in 11565 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the 11566 public. The writing shall document the basis for this determination.

11567 § 39. Definitions.

- 11568 As used in §§ 39 through 46, unless the context requires a different meaning:
- 11569 "Contractor" means the entity that has a direct contract with the Institution.
- 11570 "Debtor" means any individual, business, or group having a delinquent debt or account with any state 11571 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.
- "Payment date" means either (i) the date on which payment is due under the terms of a contract for 11572 11573 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after 11574 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or 11575 services by the Institution.
- "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to 11576 11577 whom the contract was awarded or to any subcontractor in the performance of the work provided for in 11578 such contract.
 - § 40. Exemptions.

11579

11580 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any 11581 public utility tariffs prescribed by the State Corporation Commission.

11582 § 41. Retainage to remain valid.

Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall 11583 11584 remain valid.

11585 § 42. Prompt payment of bills by the Institution.

A. The Institution shall promptly pay for the completely delivered goods or services by the required 11586 11587 payment date.

11588 Payment shall be deemed to have been made when offset proceedings have been instituted, as 11589 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

11590 B. Separate payment dates may be specified for contracts under which goods or services are provided 11591 in a series of partial deliveries or executions to the extent that such contract provides for separate 11592 payment for such partial delivery or execution. 11593

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

11594 In instances where there is a defect or impropriety in an invoice or in the goods or services received, 11595 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would 11596 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the 11597 invoice or the goods or services.

11598 § 44. Date of postmark deemed to be date payment is made.

11599 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date 11600 payment is made for purposes of these Rules.

11601 § 45. Payment clauses to be included in contracts.

11602 Any contract awarded by the Institution shall include:

11603 1. A payment clause that obligates the contractor to take one of the two following actions within 11604 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the 11605 subcontractor under that contract:

11606 a. Pay the subcontractor for the proportionate share of the total payment received from the Institution 11607 attributable to the work performed by the subcontractor under that contract; or

11608 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the 11609 subcontractor's payment with the reason for nonpayment.

- 11610 2. A payment clause that requires (i) individual contractors to provide their social security numbers 11611 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 11612 numbers.
- 11613 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts 11614 owed by the contractor that remain unpaid after seven days following receipt by the contractor of 11615 payment from the Institution for work performed by the subcontractor under that contract, except for 11616 amounts withheld as allowed in subdivision 1b.
- 11617 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest 11618 shall accrue at the rate of 1 percent per month."
- 11619 Any such contract awarded shall further require the contractor to include in each of its subcontracts a 11620 provision requiring each subcontractor to include or otherwise be subject to the same payment and 11621 interest requirements with respect to each lower-tier subcontractor.

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11622 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause 11623 in this section shall not be construed to be an obligation of the Institution. A contract modification shall 11624 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement 11625 claim shall not include any amount for reimbursement for the interest charge.

11626 § 46. Interest penalty; exceptions.

11627 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the 11628 Institution to a vendor that remain unpaid after seven days following the payment date. However, 11629 nothing in this section shall affect any contract providing for a different rate of interest, or for the 11630 payment of interest in a different manner.

11631 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on 11632 corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of 11633 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 11634 11635 interest established pursuant to § 58.1-1812 of the Code of Virginia.

11636 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 11637 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 11638 delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a 11639 11640 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 11641 the disagreement.

11642 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 11643 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 11644 contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or 11645 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 11646 Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the 11647 11648 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 11649 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 11650 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days 11651 following the payment date. 11652

§ 47. Ineligibility.

11653 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 11654 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the 11655 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 11656 11657 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 11658 requested by the bidder within five business days after receipt of the notice.

11659 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 11660 challenging the evaluation. The Institution shall issue its written determination of disqualification or 11661 ineligibility based on all information in the possession of the Institution, including any rebuttal 11662 information, within five business days of the date the Institution received such rebuttal information.

11663 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 11664 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 11665 evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The 11666 11667 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 11668 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 11669 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 11670 in § 54.

11671 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 11672 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 11673 restoration of eligibility. 11674

§ 48. Appeal of denial of withdrawal of bid.

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final 11675 11676 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 11677 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 11678 instituting legal action as provided in § 54.

11679 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, 11680 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 11681 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released 11682 only upon a final determination that the bidder was entitled to withdraw the bid.

11683 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an

11684 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 11685 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to 11686 Bid, the sole relief shall be withdrawal of the bid.

11687 § 49. Determination of nonresponsibility.

11688 A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed 11689 11690 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent 11691 low bidder is responsible. If the Institution so determines, then it may proceed with an award in 11692 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution 11693 determines that the apparent low bidder is not responsible, it shall proceed as follows:

11694 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 11695 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 11696 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that 11697 relate to the determination, if so requested by the bidder within five business days after receipt of the 11698 notice.

11699 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 11700 challenging the evaluation. The Institution shall issue its written determination of responsibility based on 11701 all information in the possession of the Institution, including any rebuttal information, within five 11702 business days of the date the Institution received the rebuttal information. At the same time, the 11703 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

11704 3. Such notice shall state the basis for the determination, which shall be final unless the bidder 11705 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures 11706 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 11707 as provided in § 54.

11708 The provisions of this subsection shall not apply to procurements involving the prequalification of 11709 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such 11710 bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the 11711 11712 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in 11713 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or 11714 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the 11715 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or 11716 directed award as provided in subsection A of § 54, or both.

11717 If it is determined that the decision of the Institution was not an honest exercise of discretion, but 11718 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state 11719 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules. 11720

11721 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract 11722 shall proceed under this section, and may not protest the award or proposed award under the provisions 11723 of § 50 of these Rules.

11724 D. Nothing contained in this section shall be construed to require the Institution, when procuring by 11725 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 11726 to be the most advantageous. 11727

§ 50. Protest of award or decision to award.

11728 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 11729 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 11730 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 11731 notice of the award or the announcement of the decision to award shall be given by the Institution in 11732 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 11733 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 11734 protest the award or decision to award such contract shall submit the protest in the same manner no 11735 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 11736 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part 11737 upon information contained in public records pertaining to the procurement transaction that are subject 11738 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall 11739 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at 11740 such later time as provided in this section. No protest shall lie for a claim that the selected bidder or 11741 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest 11742 and the relief sought. The Institution or designated official shall issue a decision in writing within 10 11743 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 11744 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting

11745 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as 11746 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the 11747 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of 11748 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 11749 standards of § 55 of these Rules.

11750 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the 11751 sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to 11752 comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or 11753 capricious, then the sole relief shall be as hereinafter provided.

11754 Where the award has been made but performance has not begun, the performance of the contract 11755 may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a 11756 11757 contract is declared void, the performing contractor shall be compensated for the cost of performance up 11758 to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

11759 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing 11760 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to 11761 award was based on fraud or corruption or on an act in violation of these Rules, the Institution, 11762 designated official or appeals board may enjoin the award of the contract to a particular bidder. 11763

§ 51. Effect of appeal upon contract.

11764 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in 11765 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has 11766 been filed. 11767

§ 52. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event 11768 11769 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided 11770 in § 54, no further action to award the contract shall be taken unless there is a written determination that 11771 proceeding without delay is necessary to protect the public interest or unless the bid or offer would 11772 expire. 11773

§ 53. Contractual disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 11774 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be 11775 11776 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing 11777 herein shall preclude a contract from requiring submission of an invoice for final payment within a 11778 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of 11779 claims shall not delay payment of amounts agreed due in the final payment.

11780 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 11781 Such procedure, which may be contained in the contract or may be specifically incorporated into the 11782 contract by reference and made available to the contractor, shall establish a time limit for a final 11783 decision in writing by the Institution. If the Institution has established administrative procedures meeting 11784 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically 11785 incorporated in the contract by reference and made available to the contractor. The Institution may 11786 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 11787 (ADR) as an administrative procedure.

11788 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these 11789 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's 11790 decision on the claim, unless the Institution fails to render such decision within the time specified in the 11791 contract.

11792 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within 11793 six months of the date of the final decision on the claim by the Institution by invoking administrative 11794 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting 11795 legal action as provided in § 54. 11796

§ 54. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from 11797 11798 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 11799 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that 11800 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest 11801 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of 11802 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in 11803 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously 11804 11805 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a 11806 responsible bidder, the court may direct the Institution to award the contract to such bidder in

11807 accordance with the requirements of this section and the Invitation to Bid.

11808 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the 11809 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes 11810 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary 11811 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, 11812 or the terms or conditions of the Invitation to Bid.

11813 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole 11814 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or 11815 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit 11816 court challenging a proposed award or the award of a contract, which shall be reversed only if the 11817 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but 11818 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state 11819 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

11820 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 11821 of reasonable security to protect the Institution.

11822 E. A contractor may bring an action involving a contract dispute with the Institution in the 11823 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be 11824 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of 11825 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of 11826 Accounts.

11827 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of 11828 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, 11829 the procedures shall be exhausted prior to instituting legal action concerning the same procurement 11830 transaction unless the Institution agrees otherwise.

11831 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a 11832 contractor.

§ 55. Administrative appeals procedure.

11833

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 11834 11835 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 11836 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 11837 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 11838 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 11839 disinterested person or panel, and the opportunity to present pertinent information and the issuance of a 11840 written decision containing findings of fact. The disinterested person or panel shall not be an employee 11841 of the governmental entity against whom the claim has been filed. The findings of fact shall be final and 11842 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so 11843 grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were 11844 not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. 11845 No determination on an issue of law shall be final if appropriate legal action is instituted in a timely 11846 manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in 11847 establishing an Alternative Dispute Resolution (ADR) procedure.

11848 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 11849 judicial review if such action is brought within 30 days of receipt of the written decision. 11850

§ 56. Alternative dispute resolution.

11851 The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution 11852 11853 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of 11854 Virginia, as applicable. 11855

§ 57. Ethics in public contracting.

11856 The Institution and its governing body, officers and employees shall be governed by the Ethics in 11857 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of 11858 Chapter 43 of Title 2.2 of the Code of Virginia. 11859 EXHIBIT F 11860 MANIA CEMENIT A CDEEMENIT 110/1

11001	MANAGEMENTAGREEMENT
11862	BETWEEN
11863	THE COMMONWEALTH OF VIRGINIA
11864	AND
11865	VIRGINIA COMMONWEALTH UNIVERSITY
11866	PURSUANT TO
11867	THE RESTRUCTURED HIGHER EDUCATION

11868	FINANCIAL AND ADMINISTRATIVE OPERATIONS
11869 11870	ACT OF 2005
11870	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
11872	
11873 11874	THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
11875	I. PREAMBLE. The Destructured Higher Education Einspecial and Administrative Operations Act (the Act) Charter
11876 11877	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting
11878	additional authority to institutions of higher education for financial operations and management, subject
11879	to the adoption of policies by their governing boards and the approval of management agreements to be
11880	negotiated with the Commonwealth.
11881	The following provisions of this Policy constitute the adopted Board of Visitors policies regarding
11882	Virginia Commonwealth University's financial operations and management.
11883	This Policy is intended to cover the authority that may be granted to the University pursuant to
11884	Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
11885	Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
11886	and the University's Enabling Legislation, are not affected by this Policy.
11887	II. DEFINITIONS.
11888 11889	As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:
118890	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
11891	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
11892	"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth
11893	University.
11894	"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
11895	the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
11896	entered into a Management Agreement with the Commonwealth to be governed by the provisions of
11897	Subchapter 3 of the Act.
11898	"Effective Date" means the effective date of the initial Management Agreement between the
11899 11900	University and the Commonwealth.
11900	"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
11902	of the University, and as provided in §§ 2.2-2817.2 and 2.2-2905.
11903	"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
11904	between the University and the Commonwealth of Virginia.
11905	"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
11906	9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
11907	general government funds, as defined in the December 2006 Report to the Governor and General
11908	Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.
11909 11910	"University" means Virginia Commonwealth University. III. SCOPE OF POLICY.
11910	This Policy applies to the University's responsibility for management, investment and stewardship of
11912	all its financial resources, including but not limited to, general, non-general and private funds. This
11913	responsibility includes maintaining an independent uniform system of accounting, financial reporting,
11914	and internal controls adequate to protect and account for the University's financial resources.
11915	IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
11916	The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
11917	proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
11918	of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
11919 11920	to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University who
11920 11921	the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the
11921	implementation of those duties and responsibilities pursuant to the University's usual delegation policies
11923	and procedures.
11924	V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.
11925	The President, acting through the Senior Vice President for Finance and Administration or other
11926	designee, shall continue to be authorized by the Board to maintain existing and implement new policies

designee, shall continue to be authorized by the Board to maintain existing and implement new policies
governing the management of University financial resources. These policies shall continue to (i) ensure
compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current
accounting principles employed by the Commonwealth, including the use of fund accounting principles,

11930 with regard to the establishment of the underlying accounting records of the University and the 11931 allocation and utilization of resources within the accounting system, including the relevant guidance 11932 provided by the State Council of Higher Education for Virginia chart of accounts with regard to the 11933 allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk 11934 management and internal controls to protect and safeguard all financial resources, including moneys 11935 transferred to the University pursuant to a general fund appropriation, and (iv) ensure compliance with 11936 the requirements of the Appropriation Act.

11937 The financial management system shall continue to include a financial reporting system to satisfy 11938 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 11939 as specified in the related State Comptroller's Directives, and the University's separately audited financial 11940 statements. To ensure observance of limitations and restrictions placed on the use of the resources 11941 available to the University, the accounting and bookkeeping system of the University shall continue to 11942 be maintained in accordance with the principles prescribed for governmental organizations by the 11943 Governmental Accounting Standards Board.

11944 In addition, the financial management system shall continue to provide financial reporting for the 11945 President, acting through the Senior Vice President for Finance and Administration or other designee, 11946 and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the 11947 University. Upon the Effective Date of the initial Management Agreement between the University and 11948 the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in 11949 Section VII below, the University shall not be required to record its financial transactions in the 11950 Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing 11951 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems 11952 that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The 11953 University's financial reporting system shall provide (i) monthly summary reports for State agencies 11954 including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the 11955 Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the 11956 Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the 11957 Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a 11958 sufficient level of detail, on such schedule, and using such format that is compatible with the 11959 Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such 11960 other special reports as may be requested from time to time.

11961 VI. FINANCIAL MANAGEMENT POLICIES.

11962 The President, acting through the Senior Vice President for Finance and Administration or other 11963 designee, shall create and implement any and all financial management policies necessary to establish a 11964 financial management system with adequate risk management and internal control processes and 11965 procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's 11966 11967 11968 financial management. These policies shall include, but need not be limited to, the development of a 11969 tailored set of finance and accounting practices that seek to support the University's specific business 11970 and administrative operating environment in order to improve the efficiency and effectiveness of its 11971 business and administrative functions. In general, the system of independent financial management 11972 policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies 11973 and Procedures such as establishing strong risk management and internal accounting controls to ensure 11974 University financial resources are properly safeguarded and that appropriate stewardship of public funds 11975 is obtained through management's oversight of the effective and efficient use of such funds in the 11976 performance of University programs.

11977 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the 11978 University shall continue to follow the Commonwealth's accounting policies until such time as specific 11979 alternate policies can be developed, approved and implemented. Such alternate policies shall include 11980 applicable accountability measures and shall be submitted to the State Comptroller for review and 11981 comment before they are implemented by the University. 11982

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

11983 Under subsection A of § 23-38.104 of the Act, subject to applicable accountability measures and 11984 audits, the University shall have the power and authority to manage all monies received by it. All State 11985 general funds to be allocated to the University shall remain subject to the appropriations process.

11986 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher 11987 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 11988 Assembly the degree to which each public institution of higher education of the Commonwealth has met 11989 the financial and administrative management and educational-related performance benchmarks called for 11990 by that subsection and approved as part of the Appropriation Act then in effect for the State goals and

11991 objectives set forth in subdivisions B 1 through B 12 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 11992 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year 11993 for which the financial and administrative management and educational-related performance benchmarks 11994 described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal 11995 vears thereafter, each public institution of higher education of the Commonwealth that (i) has been 11996 certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and 11997 (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain financial 11998 incentives, including interest on the tuition and fees and other non-general fund Educational and General 11999 Revenues deposited into the State Treasury by the public institution of higher education.

12000 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
12001 which it has received such certification from SCHEV, the University is authorized to hold and invest
12002 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise
12003 funds, and all other non-general fund revenues (excluding gift, agency and endowment funds and the
12004 investment income thereon) subject to the following requirements:

12005 1. The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.

12007 2. Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section12008 IX below.

12009 3. The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold 12010 in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Interest earned on the escrow account shall be deposited to the account. Upon 12011 receipt of the required State Council of Higher Education for Virginia certification that the University 12012 12013 has met such institutional performance benchmarks and the conditions prescribed in subsection B of 12014 § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable 12015 no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the 12016 escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the 12017 University may expend the funds for purposes related to its mission. If public institutions of higher 12018 education of the Commonwealth are permitted, or the University in particular is permitted, by the 12019 Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned 12020 on sponsored programs and research funds, then this paragraph shall not apply to such interest on such 12021 funds, and such interest shall not be held in escrow.

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

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

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

12035 7. The Commonwealth shall retain all funds related to general fund appropriations, but shall pay12036 these funds to the University as specified in Section IX below.

12037 The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 12038 12039 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 12040 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 12041 the two years in the next biennium by November 1 of each odd-numbered year and the estimate to be 12042 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 12043 each even-numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the 12044 Department of Planning and Budget by July 31 of the subsequent fiscal year.

12045 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other 12046 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income 12047 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the 12048 intent of the Commonwealth and the University that the University shall be exempt from the revenue 12049 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the 12050 12051 University that the University shall be entitled to retain non-general fund savings generated from 12052 changes in Commonwealth rates and charges, including but not limited to health, life, and disability

insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
reverting such savings back to the Commonwealth. This financial resource policy assists the University
by providing the framework for retaining and managing non-general funds, for the receipt of general
funds, and for the use and stewardship of all these funds.

12057 The President, acting through the Senior Vice President for Finance and Administration or other 12058 designee, shall continue to provide oversight of the University's cash management system which is the 12059 framework for the retention of non-general funds. The Assurance Services Department of the University 12060 shall periodically audit the University's cash management system in accordance with appropriate risk 12061 assessment models and make reports to the Audit Committee of the Board of Visitors. Additional 12062 oversight shall continue to be provided through the annual audit and assessment of internal controls 12063 performed by the Auditor of Public Accounts.

12064 For the receipt of general and non-general funds, the University shall conform to the Security for
12065 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently
12066 exists and from time to time may be amended.

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

12068 The President, acting through the Senior Vice President for Finance and Administration or other
12069 designee, shall continue to be authorized to create and implement any and all Accounts Receivable
12070 Management and Collection policies as part of a system for the management of University financial
12071 resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter
12072 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the University shall take all appropriate and
12073 cost effective actions to aggressively collect accounts receivable in a timely manner.

12074 These shall include, but not be limited to, establishing the criteria for granting credit to University 12075 customers; establishing the nature and timing of collection procedures within the above general 12076 principles; and the independent authority to select and contract with collection agencies and, after 12077 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 12078 collection activities for all University accounts receivable such as reporting delinquent accounts to credit 12079 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 12080 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's 12081 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the 12082 State Comptroller to implement such Programs, and shall provide a quarterly summary report of 12083 receivables to the Department of Accounts in accordance with the reporting procedures established 12084 pursuant to the Virginia Debt Collection Act.

12085 IX. DISBURSEMENT MANAGEMENT.

12067

12086 The President, through the Senior Vice President for Finance and Administration or other designee, 12087 shall continue to be authorized to create and implement any and all disbursement policies as part of a 12088 system for the management of University financial resources. The disbursement management policies 12089 shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, 12090 in the execution of the University's operations. These policies also shall continue to address the timing 12091 of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related 12092 12093 disbursements. Further, the University's disbursement policy shall continue to provide for the 12094 mechanisms by which payments are made including the use of charge cards, warrants, and electronic 12095 payments. Since the University no longer will interface to the CARS system or any replacement for the 12096 CARS system for disbursements, the University shall establish its own mechanisms for electronic 12097 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the 12098 Commonwealth's Debt Set-Off Collection Programs.

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

12105 1. The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation
12106 for Educational and General programs on *or about* the first and fifteenth days of each month *with*12107 *adjustments as needed to meet short-term cash requirements associated with the Commonwealth's*12108 *bimonthly pay dates*, and up to 50 percent of its annual general fund appropriation for Student Financial
12109 Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after
12110 February 1 of each year in order to meet student obligations;

12111 2. The University may draw down the sum of all tuition and E&G fees and all other non-general 12112 fund revenues deposited to the State Treasury each day on the same business day they were deposited; 12113 and 12139

12114 3. The University anticipates that expenditures could exceed available revenues from time to time 12115 during the year if the above disbursement schedule is used. When the University projects a cash deficit 12116 is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in 12117 12118 a form and within a time frame agreeable to the parties, in order to cover expenditures.

12119 These disbursement policies shall authorize the President, acting through the Senior Vice President 12120 for Finance and Administration or other designee, to independently select, engage, and contract for such 12121 consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may 12122 12123 be necessary or desirable in his or her discretion. The policies also shall continue to include the ability 12124 to locally manage and administer the Commonwealth's credit card and cost recovery programs related to 12125 disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those 12126 programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing 12127 12128 those aspects of those policies. The disbursement policies shall ensure that adequate risk management 12129 and internal control procedures shall be maintained over previously decentralized processes for public 12130 records, payroll, and non-payroll disbursements. The University shall continue to provide summary 12131 quarterly prompt payment reports to the Department of Accounts in accordance with the reporting 12132 procedures established pursuant to the Prompt Payment Act.

12133 The University's disbursement policies shall be guided by the principles of the Commonwealth's 12134 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial management agreement with the Commonwealth, the University shall 12135 continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the 12136 12137 12138 State Comptroller for review and comment prior to their implementation by the University.

X. DEBT MANAGEMENT.

12140 The President, acting through the Senior Vice President for Finance and Administration or other 12141 designee, is authorized to create and implement any and all debt management policies as part of a 12142 system for the management of University financial resources.

Pursuant to subsection B of § 23-38.108 of the Act, the University shall have the authority to issue 12143 12144 bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the 12145 Treasury Board, and that are consistent with the University's debt-management policy established by its 12146 Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any 12147 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided 12148 12149 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 12150 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised 12151 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 12152 comment prior to its adoption by the University.

12153 The University recognizes that there are numerous types of financing structures and funding sources 12154 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 12155 the President, acting through the Senior Vice President for Finance and Administration or other 12156 designee, within the context of the overall portfolio to ensure that any financial product or structure is 12157 consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, 12158 acting through the Senior Vice President for Finance and Administration or other designee, shall obtain 12159 sufficient documentation to gain a full understanding of the transaction, including (i) the identification of 12160 potential risks and benefits, and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 12161 12162 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not 12163 constitute State Tax Supported Debt.

12164 The University currently has established policy relating to the total permissible amount of outstanding 12165 debt by monitoring University-wide ratios that measure debt compared to University balance-sheet 12166 resources and annual debt service burden. These measures are monitored and reviewed regularly in light 12167 of the University's current strategic initiatives and expected debt requirements. The Board of Visitors 12168 shall periodically review and approve the University's debt management policy. Any change in the current policy shall be submitted to the Treasurer of Virginia for review and comment prior to their 12169 12170 adoption by the University. 12171

XI. INVESTMENT POLICY.

12172 It is the policy of the University to invest its operating and reserve funds solely in the interest of the 12173 University and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act 12174 12175 (§ 2.2-4500 et seq.) of the Code of Virginia. Investments shall be made with the care, skill, prudence 12176 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and 12177 familiar with such matters would use in the conduct of an enterprise of a like character and with like 12178 aims.

12179 Endowment investments shall be invested and managed in accordance with the Uniform Management 12180 of Institutional Funds Act, §§ 55-268.1 through 55-268.10 and § 23-76.1 of the Code of Virginia.

12181 The Board of Visitors shall periodically review and approve the investment guidelines governing the 12182 University's operating and reserve funds.

12183 XII. INSURANCE AND RISK MANAGEMENT.

12184 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made 12185 12186 available to the University through the Commonwealth's Division of Risk Management and in which the 12187 University is then participating, to enable the Commonwealth to complete an adverse selection analysis 12188 of any such decision and to determine the additional costs to the Commonwealth that would result from 12189 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University 12190 proceeds to withdraw from the insurance or risk management program, the University shall reimburse 12191 the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the 12192 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University 12193 and the Commonwealth.

12194 3. That the provisions of the first enactment of this Act shall expire at midnight on June 30, 2012, 12195 provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House 12196 Committee on Appropriations and the Senate Committee on Finance written notification that this 12197 Management Agreement needs to be renegotiated or revised. If such notification is not received, this 12198 Management Agreement shall continue in effect until June 30, 2015. The expiration of such enactment 12199 shall automatically result in the expiration of the provisions of any management agreement between the 12200 Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008, 12201 and incorporated into this Act.

12202 4. That § 4.3, Attachment 1 of Exhibit D, and Exhibit F of the first enactment, and the third 12203 enactment of Chapter 616 of the Acts of Assembly of 2008 are amended and reenacted as follows:

12204 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 12205 30, 2012, provided that on or before November 15, 2011, the Governor provides to the Chairmen of the 12206 House Committee on Appropriations and the Senate Committee on Finance written notification that this 12207 Management Agreement needs to be renegotiated or revised. If such notification is not received, this 12208 Management Agreement shall continue in effect until June 30, 2015. **ATTACHMENT 1**

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Rules Governing Procurement of Goods, Services, Insurance, and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia Governed by Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act,

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

12216 In accordance with the provisions of the Restructured Higher Education Financial and Administrative 12217 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in 12218 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the 12219 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth 12220 pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, 12221 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and 12222 construction by the Institution: 12223

§ 1. Purpose.

12224 The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods, 12225 services, insurance, and construction by the Institution from nongovernmental sources, to include 12226 governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the 12227 12228 Institution, the contractor, or some third party is providing the consideration.

12229 § 2. Scope of Procurement Authority.

12230 Subject to these Rules, and the Institution's continued substantial compliance with the terms and 12231 conditions of its Management Agreement with the Commonwealth pursuant to subdivision D 4 of 12232 § 23-38.88 and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, 12233 12234 and construction, including but not limited to capital outlay-related procurement and information 12235 technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of 12236 the Restructuring Act.

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12237 § 3. Competition is the Priority.

12238 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all 12239 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any 12240 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's 12241 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body 12242 of the Institution that competition be sought to the maximum feasible degree, that procurement 12243 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad 12244 flexibility in fashioning details of such competition, that the rules governing contract awards be made 12245 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing 12246 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely 12247 exchange information concerning what is sought to be procured and what is offered. The Institution may 12248 consider best value concepts when procuring goods and nonprofessional services, but not construction or 12249 professional services. Professional services will be procured using a qualification-based selection process. 12250 The criteria, factors, and basis for consideration of best value and the process for the consideration of 12251 best value shall be as stated in the procurement solicitation. 12252

§ 4. Definitions.

As used in these Rules:

12254 "Affiliate" means an individual or business that controls, is controlled by, or is under common 12255 control with another individual or business. A person controls an entity if the person owns, directly or 12256 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition 12257 "voting security" means a security that (i) confers upon the holder the right to vote for the election of 12258 members of the board of directors or similar governing body of the business or (ii) is convertible into, 12259 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general 12260 partnership interest shall be deemed to be a voting security.

12261 "Best value," as predetermined in the solicitation, means the overall combination of quality, price, 12262 and various elements of required services that in total are optimal relative to the Institution's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole 12263 12264 proprietorship operated for profit. 12265

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

12266 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be 12267 procured, specifying the factors that will be used in evaluating the proposal and containing or 12268 incorporating by reference the other applicable contractual terms and conditions, including any unique 12269 capabilities or qualifications that will be required of the contractor.

12270 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of 12271 proposals by publication in a newspaper or newspapers of general circulation in the area in which the 12272 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that 12273 can be reasonably anticipated to submit proposals in response to the particular request. Public notice also 12274 shall be published on the Department of General Services' central electronic procurement website and 12275 may be published on other appropriate websites. In addition, proposals may be solicited directly from 12276 potential contractors.

3. a. Procurement of professional services. The procurement of professional services for capital 12277 12278 projects shall be conducted using a qualification-based selection process. The Institution shall engage in 12279 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the 12280 basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to 12281 12282 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, 12283 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors 12284 furnish estimates of man-hours or costs for services. At the discussion stage, the Institution may discuss 12285 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where 12286 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors 12287 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this 12288 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information 12289 developed in the selection process to this point, the Institution shall select in the order of preference two 12290 or more offerors whose professional qualifications and proposed services are deemed most meritorious. 12291 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory 12292 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the 12293 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be 12294 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a 12295 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly 12296 12297 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to 12298 that offeror.

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12299 A contract for architectural or professional engineering services relating to construction projects may 12300 be negotiated by the Institution for multiple projects provided (i) the projects require similar experience 12301 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under 12302 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of 12303 each project performed; (b) the sum of all projects performed in one contract term shall be as set in the 12304 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set 12305 in the Request for Proposal. Any unused amounts from any contract term may be carried forward. 12306 Competitive negotiations for such contracts may result in awards to more than one offeror provided the 12307 Request for Proposal stated the potential for a multi-vendor award.

12308 Multiphase professional services contracts satisfactory and advantageous to the Institution for 12309 environmental, location, design and inspection work regarding construction of infrastructure projects may 12310 be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, 12311 when completion of the earlier phases is necessary to provide information critical to the negotiation of a 12312 fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the 12313 Institution shall state the anticipated intended total scope of the project and determine in writing that the 12314 nature of the work is such that the best interests of such Institution require awarding the contract.

12315 b. Procurement of other than professional services. Selection shall be made of two or more offerors 12316 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the 12317 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. 12318 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but 12319 need not be the sole determining factor. After negotiations have been conducted with each offeror so 12320 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and 12321 shall award the contract to that offeror. When the terms and conditions of multiple awards are so 12322 provided in the Request for Proposal, awards may be made to more than one offeror. Should the 12323 Institution determine in writing and in its sole discretion that only one offeror has made the best 12324 proposal, a contract may be negotiated and awarded to that offeror.

12325 "Competitive sealed bidding" is a method of contractor selection, other than for professional services, 12326 which includes the following elements:

12327 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications 12328 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided 12329 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite 12330 qualifications of potential contractors. When it is impractical to prepare initially a purchase description 12331 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of 12332 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been 12333 qualified under the criteria set forth in the first solicitation.

12334 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by 12335 publication on the Department of General Services' central electronic procurement website. Public notice 12336 also may be published in a newspaper of general circulation or on other appropriate websites, or both. In 12337 addition, bids may be solicited directly from potential contractors. Any additional solicitations shall 12338 include businesses selected from a list made available by the Department of Minority Business 12339 Enterprise. 12340

3. Public opening and announcement of all bids received.

12341 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include 12342 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria 12343 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which 12344 are helpful in determining acceptability.

12345 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple 12346 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

12347 "Construction" means building, altering, repairing, improving or demolishing any structure, building 12348 or highway, and any draining, dredging, excavation, grading or similar work upon real property. "Construction management contract" means a contract in which a party is retained by the owner to

12349 12350 coordinate and administer contracts for construction services for the benefit of the owner, and may also 12351 include, if provided in the contract, the furnishing of construction services to the owner.

12352 "Covered Institution" or "Institution" means, on and after the effective date of the initial management 12353 agreement with the Commonwealth of Virginia, a public institution of higher education of the 12354 Commonwealth that has entered into a management agreement with the Commonwealth to be governed 12355 by the provisions of Subchapter 3 of the Restructuring Act.

12356 "Design-build contract" means a contract between the Institution and another party in which the party 12357 contracting with the Institution agrees to both design and build the structure, roadway or other item 12358 specified in the contract.

12359 "Goods" means all material, equipment, supplies, and printing, including information technology and

12360 telecommunications goods such as automated data processing hardware and software.

12361 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of 12362 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or 12363 delivery schedule for the goods, services or construction being procured.

12364 "Multiphase professional services contract" means a contract for the providing of professional 12365 services where the total scope of work of the second or subsequent phase of the contract cannot be 12366 specified without the results of the first or prior phase of the contract.

12367 "Nonprofessional services" means any services not specifically identified as professional services in 12368 the definition of professional services and includes small construction projects valued not over \$1 12369 million; provided that subdivision 3 a of the definition of "competitive negotiation" in this section shall 12370 still apply to professional services for such small construction projects.

12371 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at 12372 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the 12373 12374 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who 12375 would have been eligible and qualified to submit a bid or proposal had the contract been procured 12376 through competitive sealed bidding or competitive negotiation.

12377 "Professional services" means work performed by an independent contractor within the scope of the 12378 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, 12379 dentistry, medicine, optometry, pharmacy or professional engineering.

12380 "Public body" means any legislative, executive or judicial body, agency, office, department, authority, 12381 post, commission, committee, institution, board or political subdivision created by law to exercise some 12382 sovereign power or to perform some governmental duty, and empowered by law to undertake the 12383 activities described in these Rules.

12384 'Public contract" means an agreement between the Institution and a nongovernmental source that is 12385 enforceable in a court of law.

12386 "Responsible bidder" or "responsible offeror" means a person who has the capability, in all respects, 12387 to perform fully the contract requirements and the moral and business integrity and reliability that will 12388 assure good faith performance, and who has been prequalified, if required.

12389 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects 12390 to the Invitation to Bid.

12391 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative 12392 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

12393 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified 12394 goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed 12395 12396 and bidders shall have the opportunity to modify their bid prices for the duration of the time period 12397 established for bid opening.

12398 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction 12399 adopted by the governing body of the Covered Institution.

12400 "Services" means any work performed by an independent contractor wherein the service rendered 12401 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials 12402 and supplies.

12403 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working 12404 environment and individual goals that utilizes work experience and related services for assisting the 12405 handicapped person to progress toward normal living and a productive vocational status. 12406

§ 5. Methods of procurement.

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12407 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for 12408 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or 12409 competitive negotiation as provided in this section, unless otherwise authorized by law.

12410 B. Professional services shall be procured by competitive negotiation. Qualification-based selection 12411 shall be used for design services.

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

12413 D. Construction may be procured only by competitive sealed bidding, except that competitive 12414 negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally 12415 12416 advantageous to the public, which writing shall document the basis for this determination: 12417

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

12418 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or

12419 3. By the Institution for the construction of highways and any draining, dredging, excavation, grading 12420 or similar work upon real property.

12421 E. Upon a determination in writing that there is only one source practicably available for that which

12422 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed 12423 bidding or competitive negotiation. The writing shall document the basis for this determination. The 12424 Institution shall issue a written notice stating that only one source was determined to be practicably 12425 available, and identifying that which is being procured, the contractor selected, and the date on which 12426 the contract was or will be awarded. This notice shall be posted in a designated public area, which may 12427 be the Department of General Services' website for the Commonwealth's central electronic procurement 12428 system, or published in a newspaper of general circulation on the day the Institution awards or 12429 announces its decision to award the contract, whichever occurs first. Public notice shall also be 12430 published on the Department of General Services' website for the Commonwealth's central electronic 12431 procurement system and may be published on other appropriate websites.

12432 F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is 12433 12434 practicable under the circumstances. A written determination of the basis for the emergency and for the 12435 selection of the particular contractor shall be included in the contract file. The Institution shall issue a 12436 written notice stating that the contract is being awarded on an emergency basis, and identifying that 12437 which is being procured, the contractor selected, and the date on which the contract was or will be 12438 awarded. This notice shall be posted in a designated public area, which may be the Department of 12439 General Services' website for the Commonwealth's central electronic procurement system, or published 12440 in a newspaper of general circulation on the day the Institution awards or announces its decision to 12441 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also 12442 be published on the Department of General Services' website for the Commonwealth's central electronic 12443 procurement system and other appropriate websites.

12444 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 12445 sealed bids or competitive negotiation for single or term contracts for goods and services other than 12446 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; 12447 however, such small purchase procedures shall provide for competition wherever practicable.

12448 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive 12449 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases 12450 is not expected to exceed \$50,000; however such small purchase procedures shall provide for 12451 competition wherever practicable.

12452 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase 12453 of goods, products or commodities from a public auction sale is in the best interests of the public, such 12454 items may be purchased at the auction, including online public auctions. The writing shall document the 12455 basis for this determination.

12456 J. The purchase of goods or nonprofessional services, but not construction or professional services, 12457 may be made by reverse auctioning. 12458

§ 6. Cooperative procurement.

12459 A. In circumstances where the Institution determines and documents that statewide contracts for 12460 goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is 12461 12462 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on 12463 behalf of or in conjunction with public bodies, public or private health or educational institutions, other 12464 public or private organizations or entities, including public-private partnerships, charitable organizations, 12465 health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the 12466 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce 12467 12468 administrative expense in any acquisition of goods and services, other than professional services. The 12469 Institution may purchase from any authority, department, agency, institution, city, county, town, or other 12470 political subdivision of the Commonwealth's contract even if it did not participate in the request for 12471 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the 12472 procurement was being conducted on behalf of other public bodies. In such instances, deviation from the 12473 procurement procedures set forth in these Rules and the administrative policies and procedures 12474 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of 12475 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic 12476 procurement system, including the requirement for payment of applicable fees. Nothing herein shall 12477 prohibit the payment by direct or indirect means of any administrative fee that will allow for 12478 participation in any such arrangement.

12479 B. In circumstances where statewide contracts for goods and services, including information 12480 technology and telecommunications goods and services, do not provide goods and services to meet the 12481 Institution's business goals and objectives, and as authorized by the United States Congress and 12482 consistent with applicable federal regulations, and provided the terms of the contract permit such

12483 purchases:

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12484 1. The Institution may purchase goods and nonprofessional services, from a United States General 12485 Services Administration contract or a contract awarded by any other agency of the United States 12486 government; and

12487 2. The Institution may purchase telecommunications and information technology goods and 12488 nonprofessional services from a United States General Services Administration contract or a contract 12489 awarded by any other agency of the United States government.

12490 § 7. Design-build or construction management contracts authorized.

12491 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed 12492 price design-build basis or construction management basis in accordance with the provisions of this 12493 section.

12494 B. Procurement of construction by the design-build or construction management method shall be a 12495 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their 12496 qualifications. Based upon the information submitted and any other relevant information which the 12497 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be 12498 selected by the Commonwealth and requested to submit proposals. 12499

§ 8. Modification of the contract.

12500 A. A contract awarded by the Institution may include provisions for modification of the contract 12501 during performance, but no fixed-price contract may be increased by more than 25 percent of the 12502 amount of the contract or \$50,000, whichever is greater, without the advance written approval of the 12503 Institution's president or his designee. In no event may the amount of any contract, without adequate 12504 consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the 12505 consequences of an error in its bid or offer.

12506 B. The Institution may extend the term of an existing contract for services to allow completion of 12507 any work undertaken but not completed during the original term of the contract.

12508 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract 12509 modifications. 12510

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

12511 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 12512 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis 12513 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the 12514 Institution shall include businesses selected from a list made available by the Department of Minority 12515 Business Enterprise.

12516 B. The Institution shall establish programs consistent with this section to facilitate the participation of 12517 small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority 12518 12519 Business Enterprise, the United States Small Business Administration, and other public or private 12520 agencies. The Institution shall submit annual progress reports on minority business procurement to the 12521 Department of Minority Business Enterprise.

12522 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 12523 analysis that documents a statistically significant disparity between the availability and utilization of 12524 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require 12525 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing 12526 law.

12527 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder 12528 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination 12529 that employing ex-offenders on the specific contract is not in its best interest. 12530

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

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

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

12533 a. The contractor will not discriminate against any employee or applicant for employment because of 12534 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to 12535 discrimination in employment, except where there is a bona fide occupational qualification reasonably 12536 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, 12537 available to employees and applicants for employment, notices setting forth the provisions of this 12538 nondiscrimination clause.

12539 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the 12540 contractor, will state that such contractor is an equal opportunity employer.

12541 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation 12542 shall be deemed sufficient for the purpose of meeting the requirements of this section.

12543 2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every 12544 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each

12545 subcontractor or vendor.

12546 § 11. Drug-free workplace to be maintained by contractor; required contract provisions.

12547 The Institution shall include in every contract over \$10,000 the following provisions:

12548 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace 12549 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for 12550 employment, a statement notifying employees that the unlawful manufacture, sale, distribution, 12551 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's 12552 workplace and specifying the actions that will be taken against employees for violations of such 12553 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the 12554 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the 12555 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be 12556 binding upon each subcontractor or vendor.

12557 For the purposes of this section, "drug-free workplace" means a site for the performance of work 12558 done in connection with a specific contract awarded to a contractor in accordance with these Rules, the 12559 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, 12560 dispensation, possession or use of any controlled substance or marijuana during the performance of the 12561 contract. 12562

§ 12. Use of brand names.

12563 Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or 12564 manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be 12565 deemed to convey the general style, type, character, and quality of the article desired. Any article that 12566 the Institution in its sole discretion determines to be the equal of that specified, considering quality, 12567 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

12568 § 13. Comments concerning specifications.

12569 The Institution shall establish procedures whereby comments concerning specifications or other 12570 provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the 12571 time set for receipt of bids or proposals or award of the contract. 12572

§ 14. Prequalification generally; prequalification for construction.

12573 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or 12574 construction, and consideration of bids or proposals limited to prequalified contractors. Any 12575 prequalification procedure shall be established in writing and sufficiently in advance of its 12576 implementation to allow potential contractors a fair opportunity to complete the process.

12577 B. Any pregualification of prospective contractors for construction by the Institution shall be pursuant 12578 to a prequalification process for construction projects adopted by the Institution. The process shall be 12579 consistent with the provisions of this section.

12580 The application form used in such process shall set forth the criteria upon which the qualifications of 12581 prospective contractors will be evaluated. The application form shall request of prospective contractors 12582 only such information as is appropriate for an objective evaluation of all prospective contractors 12583 pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor 12584 12585 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the 12586 provisions of subsection D of § 34 of these Rules.

12587 In all instances in which the Institution requires prequalification of potential contractors for 12588 construction projects, advance notice shall be given of the deadline for the submission of 12589 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set 12590 for the submission of bids for such construction so as to allow the procedures set forth in this subsection 12591 to be accomplished.

12592 At least 30 days prior to the date established for submission of bids or proposals under the 12593 procurement of the contract for which the prequalification applies, the Institution shall advise in writing 12594 each contractor who submitted an application whether that contractor has been prequalified. In the event 12595 that a contractor is denied prequalification, the written notification to the contractor shall state the 12596 reasons for the denial of prequalification and the factual basis of such reasons.

12597 A decision by the Institution denying prequalification under the provisions of this subsection shall be 12598 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

12599 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the 12600 following:

12601 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the 12602 12603 contractor can acquire a surety bond from a corporation included on the United States Treasury list of 12604 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement; 12605

12606 2. The contractor does not have appropriate experience to perform the construction project in 12607 question;

12608 3. The contractor or any officer, director or owner thereof has had judgments entered against him 12609 within the past 10 years for the breach of contracts for governmental or nongovernmental construction, 12610 including, but not limited to, design-build or construction management;

12611 4. The contractor has been in substantial noncompliance with the terms and conditions of prior 12612 construction contracts with the Institution without good cause. If the Institution has not contracted with a 12613 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor 12614 has been in substantial noncompliance with the terms and conditions of comparable construction 12615 contracts with another public body without good cause. The Institution may not utilize this provision to 12616 deny prequalification unless the facts underlying such substantial noncompliance were documented in 12617 writing in the prior construction project file and such information relating thereto given to the contractor 12618 at that time, with the opportunity to respond;

12619 5. The contractor or any officer, director, owner, project manager, procurement manager or chief 12620 financial official thereof has been convicted within the past 10 years of a crime related to governmental 12621 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental 12622 12623 Frauds Act (§ 18.2-498.1 et seq.) of the Code of Virginia, (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 12624 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;

12625 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an 12626 established debarment procedure from bidding or contracting by any public body, agency of another 12627 state or agency of the federal government;

12628 7. The contractor failed to provide to the Institution in a timely manner any information requested by 12629 the Institution relevant to subdivisions 1 through 6 of this subsection. 12630

§ 15. Negotiation with lowest responsible bidder.

12631 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as 12632 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the 12633 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. 12634 However, the negotiation may be undertaken only under conditions and procedures described in writing 12635 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein. 12636

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

12637 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or 12638 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of 12639 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, 12640 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a 12641 particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited.

12644 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance 12645 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be 12646 excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a 12647 12648 prospective insurer pursuant to § 18. 12649

§ 18. Debarment.

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12650 Prospective contractors may be debarred from contracting for particular types of supplies, services, 12651 insurance or construction, for specified periods of time. Any debarment procedure shall be established in 12652 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a 12653 contractor's unsatisfactory performance for the Institution. 12654

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

12655 A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 12656 12657 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

12658 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets 12659 Development Council, shall advise the Institution concerning the designation of recycled goods. 12660

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

12661 A. In the case of a tie bid, preference shall be given to goods produced in Virginia and goods or 12662 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be 12663 decided by lot.

12664 B. Whenever any bidder is a resident of any other state and such state under its laws allows a 12665 resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia. 12666

12667 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where

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12668 goods are being offered, and existing price preferences have already been taken into account, preference 12669 shall be given to the bidder whose goods contain the greatest amount of recycled content. 12670

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

12671 In determining the award of any contract for coal to be purchased for use in the Institution with state 12672 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest 12673 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more 12674 than 4 percent greater than the bid price of the lowest responsive and responsible bidder offering coal 12675 mined elsewhere.

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

12677 A. In determining the award of any contract for paper and paper products to be purchased for use by 12678 the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for 12679 the purpose intended, so long as the price is not more than 10 percent greater than the price of the 12680 lowest responsive and responsible bidder or offeror offering a product that does not qualify under 12681 subsection B.

12682 B. For purposes of this section, recycled paper and paper products means any paper or paper 12683 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247. 12684

§ 23. Withdrawal of bid due to error.

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12685 A. A bidder for a public construction contract, other than a contract for construction or maintenance 12686 of public highways, may withdraw his bid from consideration if the price bid was substantially lower 12687 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and 12688 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an 12689 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made 12690 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can 12691 be clearly shown by objective evidence drawn from inspection of original work papers, documents and 12692 materials used in the preparation of the bid sought to be withdrawn.

12693 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from 12694 consideration if the price bid would have been substantially lower than the other bids due solely to the 12695 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of 12696 work, labor or material made directly in the compilation of a bid that shall be clearly shown by 12697 objective evidence drawn from inspection of original work papers, documents and materials used in the 12698 preparation of the bid sought to be withdrawn.

12699 One of the following procedures for withdrawal of a bid shall be selected by the Institution and 12700 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to 12701 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall 12702 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or 12703 designated official his original work papers, documents and materials used in the preparation of the bid 12704 within one day after the date fixed for submission of bids. The work papers shall be delivered by the 12705 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either 12706 instance, the work papers, documents and materials may be considered as trade secrets or proprietary 12707 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened 12708 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder 12709 shall have two hours after the opening of bids within which to claim in writing any mistake as defined 12710 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour 12711 period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein. 12712

12713 B. The Institution may establish procedures for the withdrawal of bids for other than construction 12714 contracts.

12715 C. No bid shall be withdrawn under this section when the result would be the awarding of the 12716 contract on another bid of the same bidder or of another bidder in which the ownership of the 12717 withdrawing bidder is more than 5 percent.

12718 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to 12719 be the low bid.

12720 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or 12721 labor to or perform any subcontract or other work agreement for the person or firm to whom the 12722 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for 12723 which the withdrawn bid was submitted.

12724 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify 12725 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid 12726 price, provided such bidder is a responsible and responsive bidder.

12727 § 24. Contract Pricing Arrangements.

12728 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other

basis that is not prohibited by these Rules. 12729

12730 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall 12731 be awarded on the basis of cost plus a percentage of cost.

12732 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of 12733 claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or 12734 part as a percentage of such claims, shall not be prohibited by this section. 12735

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

12736 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has 12737 obtained, and continues to maintain for the duration of the work, workers' compensation coverage 12738 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 12739 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, 12740 evidence of such coverage.

B. The Department of General Services shall provide the form to the Institution. Failure of the 12741 12742 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) 12743 of subsection A.

12744 C. No subcontractor shall perform any work on a construction project of the Institution unless he has 12745 obtained, and continues to maintain for the duration of such work, workers' compensation coverage 12746 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of 12747 Virginia. 12748

§ 26. Retainage on construction contracts.

12749 A. In any contract issued by the Institution for construction that provides for progress payments in 12750 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95 12751 percent of the earned sum when payment is due, with no more than 5 percent being retained to ensure 12752 faithful performance of the contract. All amounts withheld may be included in the final payment.

12753 B. Any subcontract for a public project that provides for similar progress payments shall be subject 12754 to the provisions of this section. 12755

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

12756 A. Any provision contained in any public construction contract of the Institution that purports to 12757 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable 12758 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the 12759 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to 12760 causes within their control shall be void and unenforceable as against public policy.

12761 B. Subsection A shall not be construed to render void any provision of a public construction contract 12762 awarded by the Institution that:

12763 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the 12764 contractor, or its subcontractors, agents or employees; 12765

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

3. Provides for liquidated damages for delay; or

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

12768 C. A contractor making a claim against the Institution for costs or damages due to the alleged 12769 delaying of the contractor in the performance of its work under any public construction contract of the 12770 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the 12771 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage 12772 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation 12773 or arbitration to be false or to have no basis in law or in fact.

12774 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of 12775 the contractor in the performance of work under any public construction contract for the Institution, it 12776 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to 12777 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution 12778 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is 12779 determined through litigation or arbitration to have been made in bad faith. 12780

§ 28. Bid bonds.

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12781 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 12782 million shall be accompanied by a bid bond from a surety company selected by the bidder that is 12783 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will 12784 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 12785 5 percent of the amount bid.

12786 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for 12787 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

12788 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids 12789 or proposals for construction contracts anticipated to be less than \$1 million.

12790 § 29. Performance and payment bonds. 12791 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million 12792 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to 12793 any prime contractor requiring the performance of labor or the furnishing of materials for buildings, 12794 structures or other improvements to real property owned by the Institution, the contractor shall furnish to 12795 the Institution the following bonds:

12796 1. Except for transportation-related projects, a performance bond in the sum of the contract amount 12797 conditioned upon the faithful performance of the contract in strict conformity with the plans, 12798 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a 12799 form and amount satisfactory to the Institution.

12800 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of 12801 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom 12802 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the 12803 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied 12804 or performed in the furtherance of the work.

12805 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but 12806 only for periods when the equipment rented is actually used at the site.

12807 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor 12808 that are authorized to do business in Virginia. 12809

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

12810 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

12811 E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds 12812 for construction contracts below \$1 million.

12813 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a 12814 payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor 12815 conditioned upon the payment to all persons who have and fulfill contracts that are directly with the 12816 subcontractor for performing labor and furnishing materials in the prosecution of the work provided for 12817 in the subcontract.

§ 30. Alternative forms of security.

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12819 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 12820 escrow in the face amount required for the bond.

12821 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the 12822 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain 12823 designated funds in the face amount required for the bid, payment or performance bond. Approval shall 12824 be granted only upon a determination that the alternative form of security proffered affords protection to 12825 the Institution equivalent to a corporate surety's bond.

12826 § 31. Bonds on other than construction contracts.

12827 The Institution may require bid, payment, or performance bonds for contracts for goods or services if 12828 provided in the Invitation to Bid or Request for Proposal.

12829 § 32. Action on performance bond.

No action against the surety on a performance bond shall be brought by the Institution unless 12830 12831 brought within one year after (i) completion of the contract, including the expiration of all warranties 12832 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action. 12833

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

12834 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished 12835 material in accordance with the contract documents in furtherance of the work provided in any contract 12836 for which a payment bond has been given, and who has not been paid in full before the expiration of 90 12837 days after the day on which the claimant performed the last of the labor or furnished the last of the 12838 materials for which he claims payment, may bring an action on the payment bond to recover any 12839 amount due him for the labor or material. The obligee named in the bond need not be named a party to 12840 the action.

12841 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no 12842 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's 12843 payment bond only if he has given written notice to the contractor within 180 days from the day on 12844 which the claimant performed the last of the labor or furnished the last of the materials for which he 12845 claims payment, stating with substantial accuracy the amount claimed and the name of the person for 12846 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be 12847 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at 12848 any place where his office is regularly maintained for the transaction of business. Claims for sums 12849 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the 12850 time limitations stated in this subsection.

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12851 C. Any action on a payment bond shall be brought within one year after the day on which the 12881

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12852 person bringing such action last performed labor or last furnished or supplied materials.

12853 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless 12854 it is in writing, signed by the person whose right is waived, and executed after such person has 12855 performed labor or furnished material in accordance with the contract documents. 12856

§ 34. Public inspection of certain records.

12857 A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested 12858 12859 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et 12860 seq.).

12861 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution 12862 shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect 12863 12864 bid records within a reasonable time after the opening of all bids but prior to award, except in the event 12865 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid 12866 records shall be open to public inspection only after award of the contract.

12867 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect 12868 proposal records within a reasonable time after the evaluation and negotiations of proposals are 12869 completed but prior to award, except in the event that the Institution decides not to accept any of the 12870 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only 12871 after award of the contract.

12872 E. Any inspection of procurement transaction records under this section shall be subject to reasonable 12873 restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection 12874 12875 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 12876 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the 12877 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission 12878 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the 12879 reasons why protection is necessary. 12880

§ 35. Exemption for certain transactions.

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

1. The selection of services related to the management and investment of the Institution's endowment 12882 12883 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be 12884 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by 12885 § 23-76.1.

12886 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the 12887 Institution. However, such purchase procedures shall provide for competition where practicable.

12888 3. Procurement of any construction or planning and design services for construction by the Institution 12889 when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to 12890 conform to procurement procedures that are established by federal statutes or regulations, whether or not 12891 those federal procedures are in conformance with the provisions of these Rules.

12892 4. The purchase of goods and services by the Institution when such purchases are made under a 12893 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

12894 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, 12895 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or 12896 regulations not in conformance with the provisions of these Rules, the Institution may comply with such 12897 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination 12898 of the Institution's President or his designee that acceptance of the grant or contract funds under the 12899 applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract. 12900 12901

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

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into 12902 12903 contracts with faith-based organizations for the purposes described in this section on the same basis as 12904 any other nongovernmental source without impairing the religious character of such organization, and 12905 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

12906 B. For the purposes of this section, "faith-based organization" means a religious organization that is 12907 or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 12908 12909 104-193.

12910 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this 12911 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's 12912 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based 12913 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of

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12914 religious freedom by the recipients of such goods, services, or disbursements.

12915 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and 12916 purchase orders prominently display a nondiscrimination statement indicating that it does not 12917 discriminate against faith-based organizations.

12918 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any 12919 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on 12920 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on 12921 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other 12922 organizations that contract with public bodies to account for the use of the funds provided; however, if 12923 the faith-based organization segregates public funds into separate accounts, only the accounts and 12924 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) 12925 shall be construed to supersede or otherwise override any other applicable state law.

12926 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 12927 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent 12928 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to 12929 expenditures pursuant to contracts, if any, for the services of chaplains.

12930 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from 12931 any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization 12932 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular 12933 religion.

12934 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant 12935 to a contract between the Institution and a faith-based organization, objects to the religious character of 12936 the faith-based organization from which the individual receives or would receive the goods, services, or 12937 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date 12938 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

12939 The Institution shall provide to each individual who applies for or receives goods, services, or 12940 disbursements provided pursuant to a contract between the Institution and a faith-based organization a 12941 notice in **bold** face type that states: "Neither the Institution's selection of a charitable or faith-based 12942 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's 12943 charitable or religious character, practices, or expression. No provider of services may discriminate 12944 against you on the basis of religion, a religious belief, or your refusal to actively participate in a 12945 religious practice. If you object to a particular provider because of its religious character, you may 12946 request assignment to a different provider. If you believe that your rights have been violated, please 12947 discuss the complaint with your provider or notify the appropriate person as indicated in this form. 12948

§ 37. Exemptions from competition for certain transactions.

12949 The Institution may enter into contracts without competition, as that term is described in subsections 12950 A through J of § 5 (Methods of procurement) of these Rules, for: 12951

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

12952 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the 12953 Blind and Vision Impaired;

12954 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported 12955 employment services serving the handicapped;

- 12956 c. Private educational institutions; or
- 12957 d. Other public educational institutions.
- 12958 2. Speakers and performing artists:
- 12959 3. Memberships and Association dues;

12960 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of 12961 goods or services by the Institution;

- 12962 5. Group travel in foreign countries;
- 12963 6. Conference facilities and services;
- 12964 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, 12965 registration and tournament fees;
- 12966 8. Royalties; or

12967 9. The purchase of legal services, provided that the Office of the Attorney General has been 12968 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

12969 10. Maintenance contract renewals for scientific research equipment and software, provided that the 12970 institution has posted the renewal to eVa and documented that there was only one response or less and 12971 such documentation includes a statement signed by the buyer indicating that no firm other than the 12972 original manufacturer/developer offers the service.

12973 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain 12974 transactions; limitations.

12975 The Institution may enter into contracts for insurance or electric utility service without competitive 12976 sealed bidding or competitive negotiation if purchased through an association of which the Institution is 12977 a member if the association was formed and is maintained for the purpose of promoting the interest and 12978 welfare of and developing close relationships with similar public bodies, provided such association has 12979 procured the insurance or electric utility services by use of competitive principles and provided that the 12980 Institution has made a determination in advance after reasonable notice to the public and set forth in 12981 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the 12982 public. The writing shall document the basis for this determination.

12983 § 39. Definitions.

12984 As used in §§ 39 through 46, unless the context requires a different meaning:

"Contractor" means the entity that has a direct contract with the Institution. 12985

12986 "Debtor" means any individual, business, or group having a delinquent debt or account with any state 12987 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

12988 "Payment date" means either (i) the date on which payment is due under the terms of a contract for 12989 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after 12990 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or 12991 services by the Institution.

12992 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to 12993 whom the contract was awarded or to any subcontractor in the performance of the work provided for in 12994 such contract. 12995

§ 40. Exemptions.

12996 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any 12997 public utility tariffs prescribed by the State Corporation Commission.

12998 § 41. Retainage to remain valid.

12999 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall 13000 remain valid. 13001

§ 42. Prompt payment of bills by the Institution.

13002 A. The Institution shall promptly pay for the completely delivered goods or services by the required 13003 payment date.

13004 Payment shall be deemed to have been made when offset proceedings have been instituted, as 13005 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

13006 B. Separate payment dates may be specified for contracts under which goods or services are provided 13007 in a series of partial deliveries or executions to the extent that such contract provides for separate 13008 payment for such partial delivery or execution. 13009

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

13010 In instances where there is a defect or impropriety in an invoice or in the goods or services received, 13011 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the 13012 13013 invoice or the goods or services.

13014 § 44. Date of postmark deemed to be date payment is made.

13015 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date 13016 payment is made for purposes of these Rules.

13017 § 45. Payment clauses to be included in contracts.

13018 Any contract awarded by the Institution shall include:

13019 1. A payment clause that obligates the contractor to take one of the two following actions within 13020 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the 13021 subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the Institution 13022 13023 attributable to the work performed by the subcontractor under that contract; or

13024 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the 13025 subcontractor's payment with the reason for nonpayment.

13026 2. A payment clause that requires (i) individual contractors to provide their social security numbers 13027 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification 13028 numbers.

13029 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts 13030 owed by the contractor that remain unpaid after seven days following receipt by the contractor of 13031 payment from the Institution for work performed by the subcontractor under that contract, except for 13032 amounts withheld as allowed in subdivision 1b.

13033 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest 13034 shall accrue at the rate of 1 percent per month."

13035 Any such contract awarded shall further require the contractor to include in each of its subcontracts a 13036 provision requiring each subcontractor to include or otherwise be subject to the same payment and

13037 interest requirements with respect to each lower-tier subcontractor.

13038 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause 13039 in this section shall not be construed to be an obligation of the Institution. A contract modification shall 13040 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement 13041 claim shall not include any amount for reimbursement for the interest charge.

13042 § 46. Interest penalty; exceptions.

13043 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the 13044 Institution to a vendor that remain unpaid after seven days following the payment date. However, 13045 nothing in this section shall affect any contract providing for a different rate of interest, or for the 13046 payment of interest in a different manner.

13047 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on 13048 corporate loans (prime rate) at large United States money center commercial banks as reported daily in 13049 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of 13050 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of 13051 interest established pursuant to § 58.1-1812 of the Code of Virginia.

13052 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed 13053 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of 13054 delivery of goods or services or the accuracy of any invoice received for the goods or services. The 13055 exception from the interest penalty provided by this subsection shall apply only to that portion of a 13056 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of 13057 the disagreement.

13058 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 13059 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a 13060 contractor from receiving interest on such funds under an approved escrow agreement.

13061 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the 13062 Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the 13063 13064 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is 13065 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue 13066 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days 13067 following the payment date.

§ 47. Ineligibility.

13068

13069 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from 13070 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the 13071 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the 13072 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, 13073 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so 13074 requested by the bidder within five business days after receipt of the notice.

13075 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 13076 challenging the evaluation. The Institution shall issue its written determination of disqualification or 13077 ineligibility based on all information in the possession of the Institution, including any rebuttal 13078 information, within five business days of the date the Institution received such rebuttal information.

13079 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to 13080 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the 13081 evaluation reveals that the bidder should be refused permission to participate, or disqualified from 13082 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The 13083 notice shall state the basis for the determination, which shall be final unless the bidder appeals the 13084 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the 13085 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided 13086 in § 54.

13087 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in 13088 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be 13089 restoration of eligibility. 13090

§ 48. Appeal of denial of withdrawal of bid.

13091 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final 13092 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by 13093 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by 13094 instituting legal action as provided in § 54.

13095 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, 13096 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the 13097 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released

13098 only upon a final determination that the bidder was entitled to withdraw the bid.

13099 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an 13100 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the 13101 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to 13102 Bid, the sole relief shall be withdrawal of the bid.

13103 § 49. Determination of nonresponsibility.

13104 A. Following public opening and announcement of bids received on an Invitation to Bid, the 13105 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed 13106 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in 13107 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution 13108 determines that the apparent low bidder is not responsible, it shall proceed as follows: 13109

13110 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify 13111 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for 13112 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the 13113 13114 notice.

2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information 13115 13116 challenging the evaluation. The Institution shall issue its written determination of responsibility based on 13117 all information in the possession of the Institution, including any rebuttal information, within five 13118 business days of the date the Institution received the rebuttal information. At the same time, the 13119 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

13120 3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures 13121 13122 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action 13123 as provided in § 54.

13124 The provisions of this subsection shall not apply to procurements involving the prequalification of 13125 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such 13126 bidders are not responsible.

13127 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the 13128 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in 13129 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or 13130 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the 13131 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or 13132 directed award as provided in subsection A of § 54, or both.

13133 If it is determined that the decision of the Institution was not an honest exercise of discretion, but 13134 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state 13135 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has 13136 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

13137 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract 13138 shall proceed under this section, and may not protest the award or proposed award under the provisions 13139 of § 50 of these Rules.

13140 D. Nothing contained in this section shall be construed to require the Institution, when procuring by 13141 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed 13142 to be the most advantageous. 13143

§ 50. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall 13144 13145 submit the protest in writing to the Institution, or an official designated by the Institution, no later than 13146 10 days after the award or the announcement of the decision to award, whichever occurs first. Public 13147 notice of the award or the announcement of the decision to award shall be given by the Institution in 13148 the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 13149 potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to 13150 protest the award or decision to award such contract shall submit the protest in the same manner no 13151 later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these 13152 Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject 13153 13154 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at 13155 13156 such later time as provided in this section. No protest shall lie for a claim that the selected bidder or 13157 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest 13158 and the relief sought. The Institution or designated official shall issue a decision in writing within 10 13159 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 13160 appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting 13161 the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as 13162 provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the 13163 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of 13164 Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the 13165 standards of § 55 of these Rules.

13166 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the 13167 sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to 13168 comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. 13169

13170 Where the award has been made but performance has not begun, the performance of the contract 13171 may be enjoined. Where the award has been made and performance has begun, the Institution may 13172 declare the contract void upon a finding that this action is in the best interest of the public. Where a 13173 contract is declared void, the performing contractor shall be compensated for the cost of performance up 13174 to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

13175 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing 13176 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to 13177 award was based on fraud or corruption or on an act in violation of these Rules, the Institution, 13178 designated official or appeals board may enjoin the award of the contract to a particular bidder.

13179 § 51. Effect of appeal upon contract.

13180 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in 13181 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed. 13182 13183

§ 52. Stay of award during protest.

13184 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided 13185 13186 in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would 13187 13188 expire. 13189

§ 53. Contractual disputes.

13190 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 13191 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be 13192 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing 13193 herein shall preclude a contract from requiring submission of an invoice for final payment within a 13194 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of 13195 claims shall not delay payment of amounts agreed due in the final payment.

13196 B. The Institution shall include in its contracts a procedure for consideration of contractual claims. 13197 Such procedure, which may be contained in the contract or may be specifically incorporated into the 13198 contract by reference and made available to the contractor, shall establish a time limit for a final 13199 decision in writing by the Institution. If the Institution has established administrative procedures meeting 13200 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically 13201 incorporated in the contract by reference and made available to the contractor. The Institution may 13202 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution 13203 (ADR) as an administrative procedure.

13204 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these 13205 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's 13206 decision on the claim, unless the Institution fails to render such decision within the time specified in the 13207 contract.

13208 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within 13209 six months of the date of the final decision on the claim by the Institution by invoking administrative 13210 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting 13211 legal action as provided in § 54. 13212

§ 54. Legal actions.

13213 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from 13214 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder 13215 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that 13216 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest 13217 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of 13218 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in 13219 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in 13220 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously

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13221 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a 13222 responsible bidder, the court may direct the Institution to award the contract to such bidder in 13223 accordance with the requirements of this section and the Invitation to Bid.

13224 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the 13225 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes 13226 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary 13227 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, 13228 or the terms or conditions of the Invitation to Bid.

13229 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole 13230 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or 13231 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit 13232 court challenging a proposed award or the award of a contract, which shall be reversed only if the 13233 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but 13234 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state 13235 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

13236 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting 13237 of reasonable security to protect the Institution.

13238 E. A contractor may bring an action involving a contract dispute with the Institution in the 13239 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be 13240 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of 13241 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of 13242 Accounts.

13243 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of 13244 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, 13245 the procedures shall be exhausted prior to instituting legal action concerning the same procurement 13246 transaction unless the Institution agrees otherwise.

13247 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a 13248 contractor. 13249

§ 55. Administrative appeals procedure.

13250 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to 13251 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from 13252 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes 13253 arising during the performance of a contract, or (v) any of these. Such administrative procedure may 13254 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a 13255 disinterested person or panel, and the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee 13256 13257 of the governmental entity against whom the claim has been filed. The findings of fact shall be final and 13258 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so 13259 grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were 13260 not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. 13261 No determination on an issue of law shall be final if appropriate legal action is instituted in a timely 13262 manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in 13263 establishing an Alternative Dispute Resolution (ADR) procedure.

13264 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute 13265 judicial review if such action is brought within 30 days of receipt of the written decision. 13266

§ 56. Alternative dispute resolution.

13267 The Institution may enter into agreements to submit disputes arising from contracts entered into 13268 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution 13269 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of 13270 Virginia, as applicable. 13271

§ 57. Ethics in public contracting.

13272 The Institution and its governing body, officers and employees shall be governed by the Ethics in 13273 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of 13274 Chapter 43 of Title 2.2 of the Code of Virginia.

13275	EXHIBIT F
13276	
13277	MANAGEMENT AGREEMENT
13278	BETWEEN
13279	THE COMMONWEALTH OF VIRGINIA
13280	AND
13281	VIRGINIA COMMONWEALTH UNIVERSITY
13282	PURSUANT TO

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13283 13284 13285 13286	THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005
13280 13287 13288	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
13289	THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY
13290	POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
13291	I. PREAMBLE.
13292	The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
13293 13294 12205	4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject
13295	to the adoption of policies by their governing boards and the approval of management agreements to be
13296	negotiated with the Commonwealth.
13297	The following provisions of this Policy constitute the adopted Board of Visitors policies regarding
13298	Virginia Commonwealth University's financial operations and management.
13299	This Policy is intended to cover the authority that may be granted to the University pursuant to
13300 13301	Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
13302	and the University's Enabling Legislation, are not affected by this Policy.
13303	II. DEFINITIONS.
13304 13305	As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:
13306	"Act" means the Restructured Higher Education Financial and Administrative Operations Act,
13307	Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.
13308	"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth
13309	University.
13310	"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
13311	the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
13312	entered into a Management Agreement with the Commonwealth to be governed by the provisions of
13313	Subchapter 3 of the Act.
13314	"Effective Date" means the effective date of the initial Management Agreement between the
13315	University and the Commonwealth.
13315 13316 13317	"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
13318	of the University, and as provided in §§ 2.2-2817.2 and 2.2-2905.
13319	"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
13320	between the University and the Commonwealth of Virginia.
13321	"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
13322 13323 13324	9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 2006 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.
13325	"University" means Virginia Commonwealth University.
13326	III. SCOPE OF POLICY.
13327 13328	This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This
13329 13330	responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.
13331	IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.
13332	The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
13333	proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
13334 13335	of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
13336 13337	the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the
13338	implementation of those duties and responsibilities pursuant to the University's usual delegation policies
13339	and procedures.
13340	V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.
13341	The President, acting through the Senior Vice President for Finance and Administration or other
13342	designed, shall continue to be authorized by the Board to maintain original and implement new policies
13342 13343	designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure

13344 compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current 13345 accounting principles employed by the Commonwealth, including the use of fund accounting principles, 13346 with regard to the establishment of the underlying accounting records of the University and the 13347 allocation and utilization of resources within the accounting system, including the relevant guidance 13348 provided by the State Council of Higher Education for Virginia chart of accounts with regard to the 13349 allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk 13350 management and internal controls to protect and safeguard all financial resources, including moneys 13351 transferred to the University pursuant to a general fund appropriation, and (iv) ensure compliance with 13352 the requirements of the Appropriation Act.

13353 The financial management system shall continue to include a financial reporting system to satisfy 13354 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, 13355 as specified in the related State Comptroller's Directives, and the University's separately audited financial 13356 statements. To ensure observance of limitations and restrictions placed on the use of the resources 13357 available to the University, the accounting and bookkeeping system of the University shall continue to 13358 be maintained in accordance with the principles prescribed for governmental organizations by the 13359 Governmental Accounting Standards Board.

13360 In addition, the financial management system shall continue to provide financial reporting for the 13361 President, acting through the Senior Vice President for Finance and Administration or other designee, 13362 and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the 13363 University. Upon the Effective Date of the initial Management Agreement between the University and 13364 the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in 13365 Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing 13366 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems 13367 13368 that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The 13369 University's financial reporting system shall provide (i) monthly summary reports for State agencies 13370 including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the 13371 Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the 13372 Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the 13373 Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a 13374 sufficient level of detail, on such schedule, and using such format that is compatible with the 13375 Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such 13376 other special reports as may be requested from time to time.

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VI. FINANCIAL MANAGEMENT POLICIES.

13378 The President, acting through the Senior Vice President for Finance and Administration or other 13379 designee, shall create and implement any and all financial management policies necessary to establish a 13380 financial management system with adequate risk management and internal control processes and 13381 procedures for the effective protection and management of all University financial resources. Such 13382 policies will not address the underlying accounting principles and policies employed by the 13383 Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a 13384 13385 tailored set of finance and accounting practices that seek to support the University's specific business 13386 and administrative operating environment in order to improve the efficiency and effectiveness of its 13387 business and administrative functions. In general, the system of independent financial management 13388 policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies 13389 and Procedures such as establishing strong risk management and internal accounting controls to ensure 13390 University financial resources are properly safeguarded and that appropriate stewardship of public funds 13391 is obtained through management's oversight of the effective and efficient use of such funds in the 13392 performance of University programs.

13393 Upon the Effective Date of its initial Management Agreement with the Commonwealth, the 13394 University shall continue to follow the Commonwealth's accounting policies until such time as specific 13395 alternate policies can be developed, approved and implemented. Such alternate policies shall include 13396 applicable accountability measures and shall be submitted to the State Comptroller for review and 13397 comment before they are implemented by the University. 13398

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

13399 Under subsection A of § 23-38.104 of the Act, subject to applicable accountability measures and 13400 audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process. 13401

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General 13402 13403 13404 Assembly the degree to which each public institution of higher education of the Commonwealth has met 13405 the financial and administrative management and educational-related performance benchmarks called for

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13406 by that subsection and approved as part of the Appropriation Act then in effect for the State goals and 13407 objectives set forth in subdivisions B 1 through B 12 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 13408 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year 13409 for which the financial and administrative management and educational-related performance benchmarks 13410 described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal 13411 years thereafter, each public institution of higher education of the Commonwealth that (i) has been 13412 certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and 13413 (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain financial 13414 incentives, including interest on the tuition and fees and other non-general fund Educational and General 13415 Revenues deposited into the State Treasury by the public institution of higher education.

13416 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
13417 which it has received such certification from SCHEV, the University is authorized to hold and invest
13418 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise
13419 funds, and all other non-general fund revenues (excluding gift, agency and endowment funds and the
13420 investment income thereon) subject to the following requirements:

13421 1. The University shall deposit such funds in the State Treasury pursuant to the State process in 13422 place at the time of such deposit.

13423 2. Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section13424 IX below.

13425 3. The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold 13426 in escrow all interest earned on the University's tuition and fees and other non-general fund Educational 13427 and General Revenues. Interest earned on the on the escrow account shall be deposited to the account. 13428 Upon receipt of the required State Council of Higher Education for Virginia certification that the 13429 University has met such institutional performance benchmarks and the conditions prescribed in 13430 subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund 13431 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the 13432 amount deposited in the escrow account as the financial incentive provided in subdivision 1 of 13433 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If 13434 public institutions of higher education of the Commonwealth are permitted, or the University in 13435 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 13436 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall 13437 not apply to such interest on such funds, and such interest shall not be held in escrow.

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4. If in any given year the University does not receive the certification from the State Council of
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5. Beginning on the effective date of its initial management agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a management agreement with the Commonwealth.

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

13451 7. The Commonwealth shall retain all funds related to general fund appropriations, but shall pay 13452 these funds to the University as specified in Section IX below.

13453 The University also shall have sum sufficient appropriation authority for all non-general funds as 13454 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations 13455 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general 13456 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 13457 the two years in the next biennium by November 1 of each odd-numbered year and the estimate to be 13458 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of 13459 each even-numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the 13460 Department of Planning and Budget by July 31 of the subsequent fiscal year.

13461 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the

13467 University that the University shall be entitled to retain non-general fund savings generated from 13468 changes in Commonwealth rates and charges, including but not limited to health, life, and disability 13469 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than 13470 reverting such savings back to the Commonwealth. This financial resource policy assists the University 13471 by providing the framework for retaining and managing non-general funds, for the receipt of general 13472 funds, and for the use and stewardship of all these funds.

13473 The President, acting through the Senior Vice President for Finance and Administration or other 13474 designee, shall continue to provide oversight of the University's cash management system which is the 13475 framework for the retention of non-general funds. The Assurance Services Department of the University 13476 shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. Additional 13477 13478 oversight shall continue to be provided through the annual audit and assessment of internal controls 13479 performed by the Auditor of Public Accounts.

13480 For the receipt of general and non-general funds, the University shall conform to the Security for 13481 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently 13482 exists and from time to time may be amended. 13483

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

13484 The President, acting through the Senior Vice President for Finance and Administration or other 13485 designee, shall continue to be authorized to create and implement any and all Accounts Receivable 13486 Management and Collection policies as part of a system for the management of University financial 13487 resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the University shall take all appropriate and 13488 13489 cost effective actions to aggressively collect accounts receivable in a timely manner.

These shall include, but not be limited to, establishing the criteria for granting credit to University 13490 13491 customers; establishing the nature and timing of collection procedures within the above general 13492 principles; and the independent authority to select and contract with collection agencies and, after 13493 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all 13494 collection activities for all University accounts receivable such as reporting delinquent accounts to credit 13495 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In 13496 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's 13497 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the 13498 State Comptroller to implement such Programs, and shall provide a quarterly summary report of 13499 receivables to the Department of Accounts in accordance with the reporting procedures established 13500 pursuant to the Virginia Debt Collection Act. 13501

IX. DISBURSEMENT MANAGEMENT.

13502 The President, through the Senior Vice President for Finance and Administration or other designee, 13503 shall continue to be authorized to create and implement any and all disbursement policies as part of a 13504 system for the management of University financial resources. The disbursement management policies 13505 shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, 13506 in the execution of the University's operations. These policies also shall continue to address the timing 13507 of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the 13508 appropriateness of certain goods or services relative to the University's mission, including travel-related 13509 disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic 13510 13511 payments. Since the University no longer will interface to the CARS system or any replacement for the 13512 CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the 13513 13514 Commonwealth's Debt Set-Off Collection Programs.

13515 Beginning with the fiscal year after the first fiscal year for which it first receives the required 13516 certification from SCHEV, the University may draw down its general fund appropriations (subject to 13517 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. 13518 Such funds shall be available to the University for disbursement as provided in the then-current rules of 13519 the Automated Clearing House (ACH) Network. The drawing down of funds may be initiated in 13520 accordance with the following schedule:

13521 1. The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation 13522 for Educational and General programs on or about the first and fifteenth days of each month with 13523 adjustments as needed to meet short-term cash requirements associated with the Commonwealth's bimonthly pay dates, and up to 50 percent of its annual general fund appropriation for Student Financial 13524 13525 Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after 13526 February 1 of each year in order to meet student obligations;

13527 2. The University may draw down the sum of all tuition and E&G fees and all other non-general 13528 fund revenues deposited to the State Treasury each day on the same business day they were deposited;

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13530 3. The University anticipates that expenditures could exceed available revenues from time to time 13531 during the year if the above disbursement schedule is used. When the University projects a cash deficit 13532 is likely in activities supported by general fund appropriations, the University may make a request to the 13533 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in 13534 a form and within a time frame agreeable to the parties, in order to cover expenditures.

13535 These disbursement policies shall authorize the President, acting through the Senior Vice President 13536 for Finance and Administration or other designee, to independently select, engage, and contract for such 13537 consultants, accountants, and financial experts, and other such providers of expert advice and 13538 consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may 13539 be necessary or desirable in his or her discretion. The policies also shall continue to include the ability 13540 to locally manage and administer the Commonwealth's credit card and cost recovery programs related to 13541 disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those 13542 programs, provided that the University shall submit the credit card and cost recovery aspects of its 13543 financial and operations policies to the State Comptroller for review and comment prior to implementing 13544 those aspects of those policies. The disbursement policies shall ensure that adequate risk management 13545 and internal control procedures shall be maintained over previously decentralized processes for public 13546 records, payroll, and non-payroll disbursements. The University shall continue to provide summary 13547 quarterly prompt payment reports to the Department of Accounts in accordance with the reporting 13548 procedures established pursuant to the Prompt Payment Act.

13549 The University's disbursement policies shall be guided by the principles of the Commonwealth's 13550 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the 13551 Effective Date of its initial management agreement with the Commonwealth, the University shall 13552 continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the 13553 13554 State Comptroller for review and comment prior to their implementation by the University.

X. DEBT MANAGEMENT.

13556 The President, acting through the Senior Vice President for Finance and Administration or other 13557 designee, is authorized to create and implement any and all debt management policies as part of a 13558 system for the management of University financial resources.

13559 Pursuant to subsection B of § 23-38.108 of the Act, the University shall have the authority to issue 13560 bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with the University's debt-management policy established by its 13561 13562 Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, 13563 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any 13564 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided 13565 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 13566 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised 13567 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and 13568 comment prior to its adoption by the University.

13569 The University recognizes that there are numerous types of financing structures and funding sources 13570 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by 13571 the President, acting through the Senior Vice President for Finance and Administration or other 13572 designee, within the context of the overall portfolio to ensure that any financial product or structure is 13573 consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, 13574 acting through the Senior Vice President for Finance and Administration or other designee, shall obtain 13575 sufficient documentation to gain a full understanding of the transaction, including (i) the identification of 13576 potential risks and benefits, and (ii) an analysis of the impact on University creditworthiness and debt 13577 capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 13578 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not 13579 constitute State Tax Supported Debt.

13580 The University currently has established policy relating to the total permissible amount of outstanding 13581 debt by monitoring University-wide ratios that measure debt compared to University balance-sheet 13582 resources and annual debt service burden. These measures are monitored and reviewed regularly in light 13583 of the University's current strategic initiatives and expected debt requirements. The Board of Visitors 13584 shall periodically review and approve the University's debt management policy. Any change in the 13585 current policy shall be submitted to the Treasurer of Virginia for review and comment prior to their 13586 adoption by the University. 13587

XI. INVESTMENT POLICY.

13588 It is the policy of the University to invest its operating and reserve funds solely in the interest of the 13589 University and in a manner that will provide the highest investment return with the maximum security

while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
(§ 2.2-4500 et seq.) of the Code of Virginia. Investments shall be made with the care, skill, prudence
and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
familiar with such matters would use in the conduct of an enterprise of a like character and with like
and sing.

13595 Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ 55-268.1 through 55-268.10 and § 23-76.1 of the Code of Virginia.

13597 The Board of Visitors shall periodically review and approve the investment guidelines governing the13598 University's operating and reserve funds.

13599 XII. INSURANCE AND RISK MANAGEMENT.

13600 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made 13601 13602 available to the University through the Commonwealth's Division of Risk Management and in which the University is then participating, to enable the Commonwealth to complete an adverse selection analysis 13603 13604 of any such decision and to determine the additional costs to the Commonwealth that would result from 13605 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University 13606 proceeds to withdraw from the insurance or risk management program, the University shall reimburse 13607 the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the 13608 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University 13609 and the Commonwealth.

3. That the provisions of the first enactment of this Act shall expire at midnight on June 30, 2012, provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015. The expiration of such enactment shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008, and incorporated into this Act.