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**SENATE BILL NO. 1156****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations  
on February 23, 2009)

(Patron Prior to Substitute—Senator Edwards)

*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 Exhibit G, Attachment 1 of Exhibit J, and Exhibit L of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3 and Exhibit M, Attachment 1 and Attachment 2 of Exhibit P, and Exhibit R of the third enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; the fifth enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3, Attachment 1 of Exhibit D, and Exhibit F of the first enactment of Chapters 594 and 616 of the Acts of Assembly of 2008; and the third enactment of Chapters 594 and 616 of the Acts of Assembly of 2008 relating to the management agreements between the Commonwealth and Virginia Polytechnic Institute and State University, the College of William and Mary in Virginia, the University of Virginia, and Virginia Commonwealth University, respectively.*

**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 first enactment of Chapter 933 of the Acts of Assembly of 2006; § 4.3 and Exhibit G, Attachment 1 of Exhibit J, and Exhibit L of the second enactment of Chapter 933 of the Acts of Assembly of 2006; § 4.3 and Exhibit M, Attachment 1 and Attachment 2 of Exhibit P, and Exhibit R of the third enactment of Chapter 933 of the Acts of Assembly of 2006; and the fifth enactment of Chapter 933 of the Acts of Assembly of 2006 are amended and reenacted as follows:**

**SECTION 4.3. Term of Agreement.** This Management Agreement 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.*

**EXHIBIT A****MANAGEMENT AGREEMENT****BETWEEN****THE COMMONWEALTH OF VIRGINIA****AND****VIRGINIA POLYTECHNIC INSTITUTE****AND STATE UNIVERSITY****PURSUANT TO****THE RESTRUCTURED HIGHER EDUCATION****FINANCIAL AND ADMINISTRATIVE OPERATIONS****ACT OF 2005****POLICY GOVERNING****CAPITAL PROJECTS****THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE****AND STATE UNIVERSITY****POLICY GOVERNING CAPITAL PROJECTS****I. PREAMBLE.**

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

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  
62 fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to  
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  
66 University's Enabling Legislation, are not affected by this Policy.

## 67 II. DEFINITIONS.

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

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

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

76 "Capital Professional Services" means professional engineering, architecture, land surveying and  
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  
82 public institution of higher education of the Commonwealth of Virginia that has entered into a  
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.

88 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on  
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.

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

## 98 III. SCOPE OF POLICY.

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  
101 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other  
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  
105 Services and construction services, 4) design reviews and code approvals for capital projects, 5)  
106 environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8)  
107 building and land dispositions, 9) project management systems, and 10) reporting requirements.

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

## 117 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  
121 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of

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

#### VI. AUTHORIZATION OF CAPITAL PROJECTS.

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

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

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

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

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

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

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

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

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

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  
194 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and  
195 project authorization based on the size, scope and cost estimate provided with the design. It shall be the  
196 University's policy that all capital projects shall be designed and constructed in accordance with  
197 applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable  
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  
205 and Community Development to perform this Building Official function. The University Building  
206 Official shall issue building permits for each capital project required by the VUSBC to have a building  
207 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building  
208 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this  
209 individual shall ensure that the VUSBC and accessibility requirements are met for that capital project  
210 and that such capital project has been inspected by the State Fire Marshal or his designee *as required*.  
211 When serving as the University Building Official, such individual shall organizationally report directly  
212 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it  
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.

223 It shall be the policy of the University to assess the environmental, historic preservation, and  
224 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts  
225 to the extent practicable. The University shall develop a procedure for the preparation and approval of  
226 environmental impact reports for capital projects, in accordance with State environmental, historic  
227 preservation, and conservation requirements generally applicable to capital projects otherwise meeting  
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  
234 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review  
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  
241 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.  
242 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure  
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

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

A. Environmental and Land Use Considerations.

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

B. Infrastructure and Site Condition.

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

C. Title and Survey.

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

D. Appraisal.

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

XII. BUILDING OR LAND DISPOSITIONS.

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

XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

XIV. REPORTING REQUIREMENTS.

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

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

#### 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

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

#### § 1. Purpose. -

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

#### § 2. Scope of Procurement Authority. -

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

#### § 3. Competition is the Priority. -

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

#### § 4. Definitions. -

As used in these Rules:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Public opening and announcement of all bids received.

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

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

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

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

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

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

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 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.

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

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

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



enforceable in a court of law.

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

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

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

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

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

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

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

§ 5. Methods of procurement. -

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

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

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

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

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

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

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 practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

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

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.

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

564 § 6. Cooperative procurement. -

565 A. In circumstances where the Institution determines and documents that statewide contracts for  
566 goods and services, including information technology and telecommunications goods and services, do not  
567 provide goods and services to the Institution that meet its business goals and objectives, the Institution is  
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,  
571 health care provider alliances or purchasing organizations or entities, or with public agencies or  
572 institutions or group purchasing organizations of the several states, territories of the United States, or the  
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  
609 president or his designee. In no event may the amount of any contract, without adequate consideration,  
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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 12. Use of brand names. -

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

§ 13. Comments concerning specifications. -

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. -

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

683 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant  
684 to a prequalification process for construction projects adopted by the Institution. The process shall be  
685 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.

698 At least 30 days prior to the date established for submission of bids or proposals under the  
699 procurement of the contract for which the prequalification applies, the Institution shall advise in writing  
700 each contractor who submitted an application whether that contractor has been prequalified. In the event  
701 that a contractor is denied prequalification, the written notification to the contractor shall state the  
702 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  
706 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  
713 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.

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

725 5. The contractor or any officer, director, owner, project manager, procurement manager or chief  
726 financial official thereof has been convicted within the past 10 years of a crime related to governmental  
727 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6  
728 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental  
729 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  
730 Virginia, or (iv) any substantially similar law of the United States or another state;

731 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an  
732 established debarment procedure from bidding or contracting by any public body, agency of another  
733 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 by  
735 the Institution relevant to subdivisions 1 through 6 of this subsection.

736 § 15. Negotiation with lowest responsible bidder. -

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

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

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

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. -

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

§ 18. Debarment. -

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

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

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

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

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

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

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

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

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

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

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

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

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.

§ 23. Withdrawal of bid due to error. -

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

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  
808 designated official his original work papers, documents and materials used in the preparation of the bid  
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  
811 instance, the work papers, documents and materials may be considered as trade secrets or proprietary  
812 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened  
813 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder  
814 shall have two hours after the opening of bids within which to claim in writing any mistake as defined  
815 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour  
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  
821 contract on another bid of the same bidder or of another bidder in which the ownership of the  
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. -

833 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other  
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  
842 obtained, and continues to maintain for the duration of the work, workers' compensation coverage  
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  
851 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of  
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  
857 performance of the contract. All amounts withheld may be included in the final payment.

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

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

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

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

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

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

3. Provides for liquidated damages for delay; or

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

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

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

§ 28. Bid bonds. -

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 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.

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

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

§ 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:

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

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

"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 contractor that are authorized to do business in Virginia.

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 bonds for construction contracts below \$1 million.

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

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  
943 days after the day on which the claimant performed the last of the labor or furnished the last of the  
944 materials for which he claims payment, may bring an action on the payment bond to recover any  
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.

957 C. Any action on a payment bond shall be brought within one year after the day on which the  
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.

980 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection  
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



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

§ 35. Exemption for certain transactions. -

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

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

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

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

4. The University of Virginia Medical Center.

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

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

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

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

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

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

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

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

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 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of 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  
1051 against you on the basis of religion, a religious belief, or your refusal to actively participate in a  
1052 religious practice. If you object to a particular provider because of its religious character, you may  
1053 request assignment to a different provider. If you believe that your rights have been violated, please  
1054 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

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;

1061 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported  
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;

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

1069 5. Group travel in foreign countries;

1070 6. Conference facilities and services;

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

1073 8. Royalties; or

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.*

1080 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain  
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  
1084 a member if the association was formed and is maintained for the purpose of promoting the interest and  
1085 welfare of and developing close relationships with similar public bodies, provided such association has  
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. -

1091 As used in §§ 39 through 46, unless the context requires a different meaning:

1092 "Contractor" means the entity that has a direct contract with the Institution.

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  
1097 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or  
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. -

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

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

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

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

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

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

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

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

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

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

Any contract awarded by the Institution shall include:

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

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

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

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

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

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

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

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

§ 46. Interest penalty; exceptions. -

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

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

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

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 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.

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

§ 47. Ineligibility. -

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

Within 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 ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

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

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

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

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

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

§ 49. Determination of nonresponsibility. -

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

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

2. Within 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 responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

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

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

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

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

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

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

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 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 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 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 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 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

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

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

§ 51. Effect of appeal upon contract. -

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

§ 52. Stay of award during protest. -

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

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 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.

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

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

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

§ 54. Legal actions. -

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

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

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

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

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

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

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

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

§ 55. Administrative appeals procedure. -

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

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

§ 56. Alternative dispute resolution. -

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

§ 57. Ethics in public contracting. -

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

## ATTACHMENT 2

### Memorandum of Agreement

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

ERP/SciQuest Implementation with eVA

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

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

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. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.

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

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

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

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

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

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

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

The University further agrees that:

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

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

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

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

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

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

Guidelines

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

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

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

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

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

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

Schedule

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

Metrics

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

~~Ninety-five~~Eighty 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 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be 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  
 1489 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such  
 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.  
 1515 D. The University shall assure that payments to CGI-AMS are current.

## 1516 EXHIBIT F

### 1517 MANAGEMENT AGREEMENT 1518 BETWEEN 1519 THE COMMONWEALTH OF VIRGINIA 1520 AND 1521 VIRGINIA POLYTECHNIC INSTITUTE 1522 AND STATE UNIVERSITY

### 1523 PURSUANT TO 1524 THE RESTRUCTURED HIGHER EDUCATION 1525 FINANCIAL AND ADMINISTRATIVE OPERATIONS 1526 ACT OF 2005

### 1527 POLICY GOVERNING 1528 FINANCIAL OPERATIONS AND MANAGEMENT

### 1529 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE 1530 AND STATE UNIVERSITY 1531 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

HOUSE SUBSTITUTE

SB1156H1

**I. PREAMBLE.**

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

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

**II. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

**III. SCOPE OF POLICY.**

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

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

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

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

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

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

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

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

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

#### VI. FINANCIAL MANAGEMENT POLICIES.

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

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

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

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

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

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

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

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

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

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

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 pay these funds to the University as specified in Section IX below.

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 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 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 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.

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

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

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

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

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

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

#### IX. DISBURSEMENT MANAGEMENT.

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

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

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation 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 nongeneral revenues deposited to the State Treasury each day on the same business day they were deposited; and

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

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  
1784 a form and within a timeframe agreeable to the parties, in order to cover expenditures.

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  
1803 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the  
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  
1814 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided  
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  
1828 by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

#### 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

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 of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from 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 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 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 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.*

#### EXHIBIT G

### 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.

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

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

#### II. DEFINITIONS.

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

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

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

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

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

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

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  
1916 §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

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.

1925 This Policy applies to the planning and budget development for capital projects, capital project  
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.

1944 The President shall adopt a system for developing one or more capital project programs that defines  
1945 or define the capital needs of the College for a given period of time consistent with the College's  
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  
1954 policy that each capital project shall be of a size and scope to provide for the defined program needs,  
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.

#### 1958 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  
1963 from State Tax Supported Debt, shall require both Board of Visitors approval and those  
1964 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the  
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  
1969 other capital projects. The President shall ensure strict adherence to this requirement.

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,  
2004 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of  
2005 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

2006 A prequalification procedure for contractors or products;

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  
2019 cost estimate provided with the design. It shall be the College's policy that all capital projects shall be  
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  
2026 function. If option (i) is selected, the individual hired as the College Building Official shall be a  
2027 ~~full-time~~ *an employee of the College who has no other assigned duties or responsibilities at the*

institution and who is not employed by any firm or business providing facility services to the College, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee *as required*. When serving 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 review requirement by maintaining a review unit of *licensed professional architects or engineers supported by resources and staff* who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired *under the College's personnel system as a member of 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 functions for the College on the same capital project.

#### IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the College 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 College shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of \$300,000 or more.

#### X. BUILDING DEMOLITIONS.

It shall be the policy of the College to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The College 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 Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.

#### XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the College 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. The President, acting through his designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through 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.

##### A. Environmental and Land Use Considerations.

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

##### B. Infrastructure and Site Condition.

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

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

#### C. Title and Survey.

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

#### D. Appraisal.

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

### XII. BUILDING OR LAND DISPOSITIONS.

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

### XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

### XIV. REPORTING REQUIREMENTS.

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

## 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

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

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  
2161 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and  
2162 exercise all of the authority relating to procurement of goods, services, insurance, and construction,  
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  
2174 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing  
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. -

2182 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,  
2188 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general  
2189 partnership interest shall be deemed to be a voting security.

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 3. a. Procurement of professional services. The procurement of professional services for capital  
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  
2210 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to  
2211 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project,  
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 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

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

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

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

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

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

3. Public opening and announcement of all bids received.

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

2274 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of  
2275 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, building  
2277 or highway, and any draining, dredging, excavation, grading or similar work upon real property.  
2278 "Construction management contract" means a contract in which a party is retained by the owner to  
2279 coordinate and administer contracts for construction services for the benefit of the owner, and may also  
2280 include, if provided in the contract, the furnishing of construction services to the owner.  
2281 "Covered Institution" or "Institution" means, on and after the effective date of the initial management  
2282 agreement with the Commonwealth of Virginia, a public institution of higher education of the  
2283 Commonwealth that has entered into a management agreement with the Commonwealth to be governed  
2284 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  
2289 telecommunications goods such as automated data processing hardware and software.  
2290 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of  
2291 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or  
2292 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.  
2296 "Nonprofessional services" means any services not specifically identified as professional services in  
2297 the definition of professional services and includes small construction projects valued not over \$1  
2298 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall  
2299 still apply to professional services for such small construction projects.  
2300 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at  
2301 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or  
2302 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the  
2303 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who  
2304 would have been eligible and qualified to submit a bid or proposal had the contract been procured  
2305 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.  
2309 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,  
2310 post, commission, committee, institution, board or political subdivision created by law to exercise some  
2311 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
2312 activities described in these Rules.  
2313 "Public contract" means an agreement between the Institution and a nongovernmental source that is  
2314 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 respects  
2319 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 Construction  
2323 adopted by the governing body of the Covered Institution.  
2324 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
2325 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
2326 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
2327 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
2328 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. -

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

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

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

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

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

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

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 practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

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

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

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

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

§ 6. Cooperative procurement. -

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

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  
2404 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic  
2405 procurement system, including the requirement for payment of applicable fees. Nothing herein shall  
2406 prohibit the payment by direct or indirect means of any administrative fee that will allow for  
2407 participation in any such arrangement.

2408 B. In circumstances where statewide contracts for goods and services, including information  
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 2. The Institution may purchase telecommunications and information technology goods and  
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,  
2433 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of  
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  
2442 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the  
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.



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

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

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

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

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

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

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

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

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

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

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

§ 12. Use of brand names. -

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

§ 13. Comments concerning specifications. -

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

§ 14. Prequalification generally; prequalification for construction. -

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

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

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

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

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 2. The contractor does not have appropriate experience to perform the construction project in  
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  
2551 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental  
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 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an  
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  
2570 particular responsive and responsible bidder or offeror.

2571 B. The Institution may waive informalities in bids.

2572 § 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. -

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

contractor's unsatisfactory performance for the Institution.

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

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

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

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

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

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

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

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

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

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

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

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.

§ 23. Withdrawal of bid due to error. -

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

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

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

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

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  
2651 which the withdrawn bid was submitted.

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  
2657 basis that is not prohibited by these Rules.

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  
2665 obtained, and continues to maintain for the duration of the work, workers' compensation coverage  
2666 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of  
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)  
2671 of subsection A.

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 -

2685 A. Any provision contained in any public construction contract of the Institution that purports to  
2686 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable  
2687 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the  
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 B. Subsection A shall not be construed to render void any provision of a public construction  
2691 contract awarded by the Institution that:

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

2694 2. Requires notice of any delay by the party claiming the delay;

2695 3. Provides for liquidated damages for delay; or

2696 4. Provides for arbitration or any other procedure designed to settle contract disputes.

2697 C. A contractor making a claim against the Institution for costs or damages due to the alleged  
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

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.

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

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

§ 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:

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

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

"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 contractor that are authorized to do business in Virginia.

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 bonds for construction contracts below \$1 million.

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

§ 30. Alternative forms of security. -

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 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 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts. -

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

§ 32. Action on performance bond. -

No action against the surety on a performance bond shall be brought by the Institution unless 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.

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

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

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 B. 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  
2777 any place where his office is regularly maintained for the transaction of business. Claims for sums  
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. -

2786 A. Except as provided in this section, all proceedings, records, contracts and other public records  
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 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution  
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.

2801 E. Any inspection of procurement transaction records under this section shall be subject to  
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. -

2810 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  
2812 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be  
2813 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by  
2814 § 23-76.1.

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

2817 3. Procurement of any construction or planning and design services for construction by the  
2818 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
2819 obligated to conform to procurement procedures that are established by federal statutes or regulations,  
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 5. The purchase of goods and services by the Institution when such purchases are made under a  
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

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

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

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

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

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

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

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

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 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

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

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 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 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 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 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections 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:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
  - c. Private educational institutions; or
  - d. Other public educational institutions.
2. Speakers and performing artists;

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 9. The purchase of legal services, provided that the Office of the Attorney General has been  
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.*  
2903 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain  
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  
2909 procured the insurance or electric utility services by use of competitive principles and provided that the  
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.  
2918 "Payment date" means either (i) the date on which payment is due under the terms of a contract for  
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. -  
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.  
2936 B. Separate payment dates may be specified for contracts under which goods or services are  
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. -  
2948 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



subcontractor under that contract:

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

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

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

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

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

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

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

§ 46. Interest penalty; exceptions. -

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

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

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

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 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.

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

§ 47. Ineligibility. -

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

Within 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 ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

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

3012 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The  
3013 notice shall state the basis for the determination, which shall be final unless the bidder appeals the  
3014 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the  
3015 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided  
3016 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.

3025 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,  
3026 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the  
3027 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released  
3028 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  
3030 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the  
3031 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to  
3032 Bid, the sole relief shall be withdrawal of the bid.

3033 § 49. Determination of nonresponsibility. -

3034 A. Following public opening and announcement of bids received on an Invitation to Bid, the  
3035 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed  
3036 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent  
3037 low bidder is responsible. If the Institution so determines, then it may proceed with an award in  
3038 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution  
3039 determines that the apparent low bidder is not responsible, it shall proceed as follows:

3040 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify  
3041 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for  
3042 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that  
3043 relate to the determination, if so requested by the bidder within five business days after receipt of the  
3044 notice.

3045 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
3046 challenging the evaluation. The Institution shall issue its written determination of responsibility based  
3047 on all information in the possession of the Institution, including any rebuttal information, within five  
3048 business days of the date the Institution received the rebuttal information. At the same time, the  
3049 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

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.

3057 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the  
3058 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in  
3059 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or  
3060 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the  
3061 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or  
3062 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 contract  
3068 shall proceed under this section, and may not protest the award or proposed award under the provisions  
3069 of § 50 of these Rules.

3070 D. Nothing contained in this section shall be construed to require the Institution, when procuring by  
3071 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed  
3072 to be the most advantageous.

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

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 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 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 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 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 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

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

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

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

§ 51. Effect of appeal upon contract. -

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

§ 52. Stay of award during protest. -

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

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 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.

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

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these

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. -

3143 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from  
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  
3146 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest  
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 B. 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  
3156 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary  
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  
3162 court challenging a proposed award or the award of a contract, which shall be reversed only if the  
3163 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but  
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  
3167 of reasonable security to protect the Institution.

3168 E. A contractor may bring an action involving a contract dispute with the Institution in the  
3169 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be  
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. -

3180 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to  
3181 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from  
3182 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes  
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.

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

3196 § 56. Alternative dispute resolution. -

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

§ 57. Ethics in public contracting. -

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

#### EXHIBIT L

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

#### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

#### THE RECTOR AND BOARD OF VISITORS OF THE COLLEGE OF WILLIAM AND MARY

#### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

##### I. PREAMBLE.

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

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

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

##### II. DEFINITIONS.

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

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

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

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

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

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

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

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

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General

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  
3262 responsibility includes maintaining an independent uniform system of accounting, financial reporting,  
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  
3268 the Effective Date of the College's initial Management Agreement with the Commonwealth or that it  
3269 may be granted by law in the future.

3270 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  
3274 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
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  
3303 transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the  
3304 current monthly interfacing with CARS , or be a part of any subsequent Commonwealth financial  
3305 systems that replace CARS or are in addition to CARS, but shall have its own financial reporting  
3306 system. The College's financial reporting system shall provide (i) summary monthly reports for State  
3307 agencies including, but not limited to, the Department of Accounts, the Department of Planning and  
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.

3314 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  
3318 resources. Such policies will not address the underlying accounting principles and policies employed by  
3319 the Commonwealth and the College, but rather will focus on the internal operations of the College's

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

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

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

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the 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.

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

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

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

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

iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the College'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 receipt of the required State Council of Higher Education for Virginia certification that the College has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund 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 § 2.2-5005, after which time the College may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the College in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 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.

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

3381 entered into a Management Agreement with the Commonwealth.

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,  
3404 retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such  
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,



and electronic payments. Since the College no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the College shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set Off Collection Programs.

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

i) The College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on *or about* the first and fifteenth days of each month *with 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 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 College may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and

iii) The College anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the College projects a cost deficit in 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 form and within a timeframe agreeable to the parties, in order to cover expenditures.

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

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

#### X. DEBT MANAGEMENT.

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

Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its 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 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 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 comment prior to its adoption by the College.

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

3504 impact on College creditworthiness and debt capacity. All such debt or financial products issued  
3505 pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act, shall be authorized by resolution  
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  
3511 periodically review and approve the College's debt capacity and debt management guidelines. Any  
3512 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to  
3513 their adoption by the College.

#### 3514 XI. INVESTMENT POLICY.

3515 It is the policy of the College to invest its operating and reserve funds solely in the interest of the  
3516 College and in a manner that will provide the highest investment return with the maximum security  
3517 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act  
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  
3529 available to the College through the Commonwealth's Division of Risk Management and in which the  
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  
3533 proceeds to withdraw from the insurance or risk management program, the College shall reimburse the  
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

3543

#### 3544 MANAGEMENT AGREEMENT

#### 3545 BETWEEN

#### 3546 THE COMMONWEALTH OF VIRGINIA

#### 3547 AND

#### 3548 THE UNIVERSITY OF VIRGINIA

#### 3549 PURSUANT TO

#### 3550 THE RESTRUCTURED HIGHER EDUCATION

#### 3551 FINANCIAL AND ADMINISTRATIVE OPERATIONS

#### 3552 ACT OF 2005

3553

#### 3554 POLICY GOVERNING CAPITAL PROJECTS

3555

#### 3556 THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

#### 3557 POLICY GOVERNING CAPITAL PROJECTS

#### 3558 I. PREAMBLE.

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

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  
3569 University may be delegated the authority to establish its own system for undertaking the  
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.

3581 This Policy is intended to encompass and implement the authority that may be granted to the  
3582 University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the  
3583 University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including  
3584 other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In  
3585 particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed  
3586 those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

## 3587 II. DEFINITIONS.

3588 As used in this policy, the following terms shall have the following meanings, unless the context  
3589 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  
3599 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,  
3602 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-Appropriation  
3612 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 Medical  
3617 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  
3623 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

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  
3631 Services and construction services, 4) design reviews and code approvals for capital projects, 5)  
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.

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

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  
3637 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
3638 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
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.

#### 3643 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  
3650 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board  
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  
3655 University policy that each capital project shall be of a size and scope to provide for the defined  
3656 program needs, designed in accordance with all applicable building codes and handicapped accessibility  
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  
3661 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief  
3662 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other  
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.

3667 It shall be the policy of the University that the implementation of capital projects shall be carried out  
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.

3672 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond  
3673 the plans and justifications that were the basis for the capital project's approval, either before or during  
3674 construction, unless approved in advance as described above. Minor changes shall be permissible if they  
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  
3683 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials  
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;

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

Making procurement rules clear in advance of any competition;

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

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

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

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

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

A prequalification procedure for contractors or products;

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

A prompt payment procedure.

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

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

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

The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee *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 Official, it shall fulfill the code review requirement by maintaining a review unit of *licensed professional architects or engineers supported by resources and staff* who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired *under the University's personnel system as a member of 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 functions for the University ~~on the same capital project~~.

#### IX. ENVIRONMENTAL IMPACT REPORTS.

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.

#### 3757 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.  
3760 The University shall develop a procedure for the preparation and review of demolition requests,  
3761 including any necessary reviews by the Department of Historic Resources and the Art and Architectural  
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  
3764 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported  
3765 Debt, general laws applicable to State owned property shall apply.

#### 3766 XI. BUILDING OR LAND ACQUISITIONS.

3767 It is the policy of the University that capital projects involving building or land acquisition shall be  
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  
3772 purchaser would perform to the end that any building or land acquired by the University shall be  
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  
3775 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is  
3776 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating  
3777 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies  
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  
3784 of the building or land and surrounding parcels, as well as any designation by State or federal agencies  
3785 of historically or archeologically significant areas on the land. Nothing herein shall be construed as  
3786 requiring the University to comply with local zoning laws and ordinances.

##### 3787 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

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

### XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

### XIV. REPORTING REQUIREMENTS.

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

#### 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

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

#### § 1. Purpose. -

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

#### § 2. Scope of Procurement Authority. -

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

#### § 3. Competition is the Priority. -

To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all

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  
3882 may consider best value concepts when procuring goods and nonprofessional services, but not  
3883 construction or professional services. Professional services will be procured using a qualification-based  
3884 selection process. The criteria, factors, and basis for consideration of best value and the process for the  
3885 consideration of best value shall be as stated in the procurement solicitation.

3886 § 4. Definitions. -

3887 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  
3902 incorporating by reference the other applicable contractual terms and conditions, including any unique  
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  
3920 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors  
3921 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this  
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  
3926 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the  
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



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

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

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

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

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

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

3. Public opening and announcement of all bids received.

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

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

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

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

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

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

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

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of

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  
4003 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall  
4004 still apply to professional services for such small construction projects.

4005 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at  
4006 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or  
4007 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the  
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  
4016 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
4017 activities described in these Rules.

4018 "Public contract" means an agreement between the Institution and a nongovernmental source that is  
4019 enforceable in a court of law.

4020 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform  
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.

4027 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction  
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  
4031 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
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.

4037 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working  
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 D. Construction may be procured only by competitive sealed bidding, except that competitive  
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 3. By the Institution for the construction of highways and any draining, dredging, excavation,  
4054 grading or similar work upon real property.

4055 E. Upon a determination in writing that there is only one source practicably available for that which  
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

Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.

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 practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

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

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

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

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

§ 6. Cooperative procurement. -

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

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

1. The Institution may purchase goods and nonprofessional services, from a United States General

4119 Services Administration contract or a contract awarded by any other agency of the United States  
4120 government; and

4121 2. The Institution may purchase telecommunications and information technology goods and  
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  
4147 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the  
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.

4156 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
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. -

4165 The Institution shall include in every contract of more than \$10,000 the following provisions:

4166 1. During the performance of this contract, the contractor agrees as follows:

4167 a. The contractor will not discriminate against any employee or applicant for employment because of  
4168 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to  
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.

4175 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation  
4176 shall be deemed sufficient for the purpose of meeting the requirements of this section.

4177 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every  
4178 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
4179 subcontractor or vendor.

4180 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. -

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

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

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

§ 12. Use of brand names. -

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

§ 13. Comments concerning specifications. -

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

§ 14. Prequalification generally; prequalification for construction. -

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

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

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

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

At least 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.

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

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

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

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

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 4. The contractor has been in substantial noncompliance with the terms and conditions of prior  
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 5. The contractor or any officer, director, owner, project manager, procurement manager or chief  
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 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an  
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. -

4265 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as  
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 A. 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.

4276 B. The Institution may waive informalities in bids.

4277 § 17. Exclusion of insurance bids prohibited. -

4278 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance  
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. -

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 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets  
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.

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

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

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

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

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.

§ 23. Withdrawal of bid due to error. -

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

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

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

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

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

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

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

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

§ 24. Contract Pricing Arrangements. -

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

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

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  
4372 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,  
4373 evidence of such coverage.

4374 B. The Department of General Services shall provide the form to the Institution. Failure of the  
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.

4389 -  
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 B. Subsection A shall not be construed to render void any provision of a public construction  
4396 contract awarded by the Institution that:

4397 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the  
4398 contractor, or its subcontractors, agents or employees;

4399 2. Requires notice of any delay by the party claiming the delay;

4400 3. Provides for liquidated damages for delay; or

4401 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  
4410 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to  
4411 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution  
4412 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is  
4413 determined through litigation or arbitration to have been made in bad faith.

4414 § 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



any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:

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

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

"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 contractor that are authorized to do business in Virginia.

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 bonds for construction contracts below \$1 million.

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

§ 30. Alternative forms of security. -

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 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 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts. -

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

§ 32. Action on performance bond. -

No action against the surety on a performance bond shall be brought by the Institution unless 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.

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

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

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

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

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless

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 B. 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 E. Any inspection of procurement transaction records under this section shall be subject to  
4507 reasonable restrictions to ensure the security and integrity of the records.

4508 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection  
4509 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14  
4510 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the  
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. -

4515 A. The provisions of these Rules shall not apply to:

4516 1. The selection of services related to the management and investment of the Institution's endowment  
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 3. Procurement of any construction or planning and design services for construction by the  
4523 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
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  
4534 applicable conditions is in the public interest. Such determination shall state the specific provision of  
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.

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

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

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 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

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

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 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 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 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 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections 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:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
  - c. Private educational institutions; or
  - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;

8. Royalties; or

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 institution 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 original manufacturer/developer offers the service.

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

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

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 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 Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

§ 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.

"Debtor" means any individual, business, or group having a delinquent debt or account with any state 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 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 services by the Institution.

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

§ 40. Exemptions. -

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

§ 41. Retainage to remain valid. -

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

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

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

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

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

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

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

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

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

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

Any contract awarded by the Institution shall include:

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

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

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

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

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

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

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

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

§ 46. Interest penalty; exceptions. -

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

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

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

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 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.

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

§ 47. Ineligibility. -

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

Within 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 ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

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

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

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

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

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

§ 49. Determination of nonresponsibility. -

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

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

2. Within 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 responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

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

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

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

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

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

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

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 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 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 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 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 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

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

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

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

§ 51. Effect of appeal upon contract. -

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

§ 52. Stay of award during protest. -

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

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 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.

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

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

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

§ 54. Legal actions. -

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

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 B. 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  
4861 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary  
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  
4867 court challenging a proposed award or the award of a contract, which shall be reversed only if the  
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 E. A contractor may bring an action involving a contract dispute with the Institution in the  
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  
4891 written decision containing findings of fact. The disinterested person or panel shall not be an employee  
4892 of the governmental entity against whom the claim has been filed. The findings of fact shall be final  
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  
4904 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of  
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.

## 4910 ATTACHMENT 2

4911

### 4912 Memorandum of Agreement

4913 The Commonwealth of Virginia and the University of Virginia

4914 ERP/SciQuest Implementation with eVA

4915 The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the  
4916 following:

4917 I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system  
4918 (Oracle).



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. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.

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

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

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

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

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

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

The University further agrees that:

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

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

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

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

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

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

Guidelines

- 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-five~~Eighty 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  
5001 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For  
5002 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by  
5003 DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be  
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  
5014 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the  
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)  
5027 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
- 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  
5035 end users using the ERP/SciQuest Integration system. The University will be responsible for the  
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;

11. Complete and certify the monthly eVA Dashboard Report; and  
 12. Timely remit any eVA transaction and non-use fees incurred by the institution.  
 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.  
 The University shall assure that payments to CGI-AMS are current.

## EXHIBIT R

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

#### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

#### THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

##### I. PREAMBLE.

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

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.

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

##### II. DEFINITIONS.

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

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

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

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

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

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

"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.

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

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

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

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

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.  
5105 "University" means the University of Virginia, consisting of the Academic Division, the College, and  
5106 the Medical Center.

5107 III. SCOPE OF POLICY.

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,  
5111 and internal controls adequate to protect and account for the University's financial resources.

5112 The University of Virginia's College at Wise shall receive the benefits of this Policy as it is  
5113 implemented by the University on behalf of the College at Wise, but the College at Wise shall not  
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  
5126 and procedures.

5127 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  
5131 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting  
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.  
5150 Upon the Effective Date of the initial Management Agreement between the University and the  
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  
5161 sufficient level of detail, on such schedule, and using such format that is compatible with the  
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.

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

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

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

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

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

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

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

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

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

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

5226 transfer to the general fund the balance in the escrow account as of June 30 of that year.

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 vi) On the first business day of the first fiscal year following the fiscal year for which it has  
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  
5239 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations  
5240 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general  
5241 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of  
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  
5249 intent of the Commonwealth and the University that the University shall be exempt from the revenue  
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  
5260 the retention of non-general funds. The Internal Audit Department of the University shall periodically  
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  
5266 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently  
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  
5278 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all  
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  
5284 receivables to the Department of Accounts in accordance with the reporting procedures established  
5285 pursuant to the Virginia Debt Collection Act.

#### 5286 IX. DISBURSEMENT MANAGEMENT.

5287 The President, acting through the Executive Vice President and Chief Operating Officer, shall

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

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

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on *or about* the first and fifteenth days of each month *with 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 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 non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and

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

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

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

#### X. DEBT MANAGEMENT.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a 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, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its 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 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided

that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.

The University recognizes that there are numerous types of financing structures and funding sources 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 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 Executive Vice President and Chief Operating Officer, 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 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 by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

The University currently has established guidelines relating to the total permissible amount of 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 regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt capacity and debt management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.

#### XI. INVESTMENT POLICY.

It is the policy of the University to invest its operating and reserve funds solely in the interest of the 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 aims.

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

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

#### XII. INSURANCE AND RISK MANAGEMENT.

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 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 of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from 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 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.

5. That the provisions of the first, second, and third enactments of this Act shall expire at midnight on June 30, 2010, *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 enactments shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and incorporated into this Act.

**2. That § 4.3 and Exhibit A, Attachment 1 and Attachment 2 of Exhibit D, and Exhibit F of the first enactment of Chapter 943 of the Acts of Assembly of 2006; § 4.3 and Exhibit G, Attachment 1 of Exhibit J, and Exhibit L of the second enactment of Chapter 943 of the Acts of Assembly of 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 Chapter 943 of the Acts of Assembly of 2006 are amended and reenacted as follows:**

SECTION 4.3. Term of Agreement. This Management Agreement 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.*

# EXHIBIT A

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

### POLICY GOVERNING CAPITAL PROJECTS

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

##### I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional preauthorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.

##### II. DEFINITIONS.

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

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

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

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

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

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

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

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

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  
5481 Station Division (State Agency 229).

### 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  
5488 for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional  
5489 Services and construction services, 4) design reviews and code approvals for capital projects, 5)  
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.

### 5501 V. CAPITAL PROGRAM.

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  
5527 President and Chief Operating Officer, for all other capital projects. The President, acting through the  
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  
5531 construction, unless approved in advance as described above. Minor changes shall be permissible if they  
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

any time but must include a statement of urgency if not part of the approved Major Capital Project program.

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

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

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

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

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

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

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

B. A prequalification procedure for contractors or products;

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

D. A prompt payment procedure.

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

## VIII. DESIGN REVIEWS AND CODE APPROVALS.

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

The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee *as required*.

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  
5597 shall fulfill the code review requirement by maintaining a review unit *of licensed professional architects*  
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  
5604 code-related design, construction, facilities-related project management or facilities management  
5605 functions for the University ~~on the same capital project~~.

5606 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  
5617 University shall develop a procedure for the preparation and review of demolition requests, including  
5618 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review  
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 ACQUISITIONS.

5624 It is the policy of the University that capital projects involving building or land acquisition shall be  
5625 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.  
5626 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure  
5627 that the project management system implemented pursuant to Section XIII below provides for a review  
5628 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent  
5629 purchaser would perform to the end that any building or land acquired by the University shall be  
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  
5632 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is  
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.

5644 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  
5648 matters prior to acquisition of the building or land: that any land can be developed for its intended  
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  
5651 ingress and egress to serve the contemplated use of the building or land; that utilities and other services  
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

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

#### D. Appraisal.

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

### XII. BUILDING OR LAND DISPOSITIONS.

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

### XIII. PROJECT MANAGEMENT SYSTEMS.

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

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

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

### XIV. REPORTING REQUIREMENTS.

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

#### 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

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

#### § 1. Purpose. -

The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These

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,  
5725 including but not limited to capital outlay-related procurement and information technology-related  
5726 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring  
5727 Act.

5728 § 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  
5740 professional services. Professional services will be procured using a qualification-based selection process.  
5741 The criteria, factors, and basis for consideration of best value and the process for the consideration of  
5742 best value shall be as stated in the procurement solicitation.

5743 § 4. Definitions. -

5744 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  
5762 proposals by publication in a newspaper or newspapers of general circulation in the area in which the  
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  
5765 shall be published on the Department of General Services' central electronic procurement website and  
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  
5777 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors  
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

developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

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

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

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

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

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

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

3. Public opening and announcement of all bids received.

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

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

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

"Construction management contract" means a contract in which a party is retained by the owner to

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  
5854 a contract for the providing of professional services where the total scope of work of the second or  
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  
5864 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who  
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.

5870 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,  
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  
5887 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
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. -

5897 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for  
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.



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

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

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

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 practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

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

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

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

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

§ 6. Cooperative procurement. -

A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures

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  
5986 qualifications. Based upon the information submitted and any other relevant information which the  
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  
6008 programs established shall be in writing and shall include cooperation with the Department of Minority  
6009 Business Enterprise, the United States Small Business Administration, and other public or private  
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. -

6021 The Institution shall include in every contract of more than \$10,000 the following provisions:

6022 1. During the performance of this contract, the contractor agrees as follows:

6023 a. The contractor will not discriminate against any employee or applicant for employment because of  
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

necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

§ 12. Use of brand names. -

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

§ 13. Comments concerning specifications. -

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

§ 14. Prequalification generally; prequalification for construction. -

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

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

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

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

At least 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.

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:

6091 1. The contractor does not have sufficient financial ability to perform the contract that would result  
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  
6103 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor  
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  
6111 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6  
6112 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental  
6113 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  
6114 Virginia, or (iv) any substantially similar law of the United States or another state;

6115 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an  
6116 established debarment procedure from bidding or contracting by any public body, agency of another  
6117 state or agency of the federal government; and

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. -

6134 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance  
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,  
6141 insurance or construction, for specified periods of time. Any debarment procedure shall be established in  
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  
6146 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  
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

Development Council, shall advise the Institution concerning the designation of recycled goods.

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

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

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

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

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

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

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

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

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.

§ 23. Withdrawal of bid due to error. -

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

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

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

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

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

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

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or

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  
6212 which the withdrawn bid was submitted.

6213 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify  
6214 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid  
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.

6221 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of  
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;

6256 3. Provides for liquidated damages for delay; or

6257 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  
6261 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage  
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  
6266 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to  
6267 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution  
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. -

6271 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1

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  
 6304 payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor  
 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.

6311 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the  
 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

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  
6335 claims payment, stating with substantial accuracy the amount claimed and the name of the person for  
6336 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be  
6337 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at  
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  
6350 seq.).

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  
6356 records shall be open to public inspection only after award of the contract.

6357 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect  
6358 proposal records within a reasonable time after the evaluation and negotiations of proposals are  
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  
6361 after award of the contract.

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  
6365 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14  
6366 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the  
6367 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission  
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.

6370 § 35. Exemption for certain transactions. -

6371 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  
6373 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be  
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 § 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. -

6393 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into  
6394 contracts with faith-based organizations for the purposes described in this section on the same basis as



any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

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

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

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

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

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 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

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

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 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 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 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 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections 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:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
  - c. Private educational institutions; or
  - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
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. -

6466 The Institution may enter into contracts for insurance or electric utility service without competitive  
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  
6470 procured the insurance or electric utility services by use of competitive principles and provided that the  
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:

6476 "Contractor" means the entity that has a direct contract with the Institution.

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. -

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,  
6502 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would  
6503 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the  
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. -

6509 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  
6512 subcontractor under that contract:

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.

6517 2. A payment clause that requires (i) individual contractors to provide their social security numbers

and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

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

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

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

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

§ 46. Interest penalty; exceptions. -

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

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

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

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 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.

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

§ 47. Ineligibility. -

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

Within 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 ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in

6579 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be  
6580 restoration of eligibility.

6581 § 48. Appeal of denial of withdrawal of bid. -

6582 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final  
6583 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by  
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,  
6587 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the  
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.

6590 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an  
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  
6599 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution  
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.

6606 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
6607 challenging the evaluation. The Institution shall issue its written determination of responsibility based on  
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.

6611 3. Such notice shall state the basis for the determination, which shall be final unless the bidder  
6612 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures  
6613 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action  
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.

6618 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the  
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  
6636 submit the protest in writing to the Institution, or an official designated by the Institution, no later than  
6637 10 days after the award or the announcement of the decision to award, whichever occurs first. Public  
6638 notice of the award or the announcement of the decision to award shall be given by the Institution in  
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

protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 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 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 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 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 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

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

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

§ 51. Effect of appeal upon contract. -

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

§ 52. Stay of award during protest. -

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

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 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.

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

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

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

6702 legal action as provided in § 54.

6703 § 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  
6706 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that  
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  
6709 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in  
6710 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in  
6711 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously  
6712 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a  
6713 responsible bidder, the court may direct the Institution to award the contract to such bidder in  
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  
6725 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state  
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  
6743 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes  
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  
6748 of the governmental entity against whom the claim has been filed. The findings of fact shall be final and  
6749 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so  
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.  
6752 No determination on an issue of law shall be final if appropriate legal action is instituted in a timely  
6753 manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in  
6754 establishing an Alternative Dispute Resolution (ADR) procedure.

6755 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute  
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.

6762 § 57. Ethics in public contracting. -

6763 The Institution and its governing body, officers and employees shall be governed by the Ethics in

Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

## ATTACHMENT 2

### Memorandum of Agreement

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

#### ERP/SciQuest Implementation with eVA

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

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

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. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.

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

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

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

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

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

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

The University further agrees that:

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

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

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

VII. The University will not require separate vendor registrations as a prerequisite for responding to University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to

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.

6828 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at  
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

6835 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for  
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 ~~Ninety-five~~Eighty 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  
6855 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For  
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  
6865 value, that include commodity codes, complete item descriptions, quantities, and unit prices;

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  
6870 monitor the usage of confirming orders with the objective of reducing their numbers to the extent  
6871 possible.

6872 The University agrees that, for confirming orders, it will resolve any vendor dispute, including  
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;

6886 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as



specifically exempted by DPS;

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 accuracy of contract catalog pricing loaded into the ERP/SciQuest;

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

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

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

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

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

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

## EXHIBIT F

### MANAGEMENT AGREEMENT

#### BETWEEN

THE COMMONWEALTH OF VIRGINIA

#### AND

VIRGINIA POLYTECHNIC INSTITUTE

AND STATE UNIVERSITY

#### PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION

FINANCIAL AND ADMINISTRATIVE OPERATIONS

ACT OF 2005

### POLICY GOVERNING

### FINANCIAL OPERATIONS AND MANAGEMENT

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE

AND STATE UNIVERSITY

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

#### I. PREAMBLE.

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

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

#### II. DEFINITIONS.

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

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

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

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

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

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

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  
6955 Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station  
6956 Division (State Agency 229).

6957 III. SCOPE OF POLICY.

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  
6971 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
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  
6977 and procedures.

6978 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  
6985 utilization of resources within the accounting system, including the relevant guidance provided by the  
6986 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and  
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  
7005 financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in  
7006 addition to CARS, but shall have its own financial reporting system. The University's financial reporting  
7007 system shall provide (i) summary monthly reports for State agencies including, but not limited to, the  
7008 Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and  
7009 Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for

Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

#### VI. FINANCIAL MANAGEMENT POLICIES.

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

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

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

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

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

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

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

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

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

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  
7073 not apply to such interest on such funds, and such interest shall not be held in escrow.

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  
7084 the required certification from SCHEV, the University may draw down all cash balances held by the  
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  
7094 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of  
7095 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the  
7096 Department of Planning and Budget by July 31 of the subsequent fiscal year.

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  
7100 intent of the Commonwealth and the University that the University shall be exempt from the revenue  
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  
7103 University that the University shall be entitled to retain non-general fund savings generated from  
7104 changes in Commonwealth rates and charges, including but not limited to health, life, and disability  
7105 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than  
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  
7116 conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the  
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  
7127 principles; and the independent authority to select and contract with collection agencies and, after  
7128 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all  
7129 collection activities for all University accounts receivable such as reporting delinquent accounts to credit  
7130 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In  
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

State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.

#### IX. DISBURSEMENT MANAGEMENT.

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

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

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on *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 nongeneral revenues deposited to the State Treasury each day on the same business day they were deposited; and

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

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

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

#### X. DEBT MANAGEMENT.

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

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  
7201 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and  
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  
7205 the President, acting through the Executive Vice President and Chief Operating Officer, within the  
7206 context of the overall portfolio to ensure that any financial product or structure is consistent with the  
7207 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the  
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  
7211 products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized  
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  
7217 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence  
7218 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and  
7219 familiar with such matters would use in the conduct of an enterprise of a like character and with like  
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.

7223 The Board of Visitors shall periodically review and approve the investment guidelines governing the  
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, ~~2010~~2012, *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*  
7240 *received, this Management Agreement shall continue in effect until June 30, 2015.*

#### 7241 EXHIBIT G

7242  
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

I. PREAMBLE.

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

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

II. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

This Policy provides guidance for 1) the process for developing one or more capital project programs for the 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

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  
7330 published Master Plan. This process may or may not mirror the Commonwealth's requirements for  
7331 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major  
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.

7342 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  
7353 other capital projects. The President shall ensure strict adherence to this requirement.

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.

7360 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION  
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;

7376 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against  
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



necessary to the contractor's normal operations;

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

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

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

A prequalification procedure for contractors or products;

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

A prompt payment procedure.

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

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

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

The President shall designate a Building Official responsible for building code compliance *at the College, including the Virginia Institute of Marine Science and Richard Bland College*, by either (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the College Building Official shall be a ~~full-time~~ *an employee of the College who has no other assigned duties or responsibilities at the institution and who is not employed by any firm or business provided facility services to the College*, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee *as required*. When serving 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 review requirement by maintaining a review unit *of licensed professional architects or engineers supported by resources and staff* who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired *under the College's personnel system as a member of 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 functions for the College ~~on the same capital project~~.

#### IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the College 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 College shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of \$300,000 or more.

#### X. BUILDING DEMOLITIONS.

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.  
7451 The President, acting through his designee, shall ensure that the project management system  
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  
7454 any building or land acquired by the College shall be suitable for its intended purpose, that the  
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  
7457 compliance with the provisions of Section VI of this Policy is achieved. In addition, the President,  
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.

7468 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  
7486 other matters that may have a significant adverse effect upon the College's ability to own, occupy,  
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  
7495 Board of Visitors approval and other approvals in accordance with general law applicable to  
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  
7499 of capital projects for the College. The systems may include the delegation of project management  
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.

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

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

#### XIV. REPORTING REQUIREMENTS.

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

#### 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

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

##### § 1. Purpose. -

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

##### § 2. Scope of Procurement Authority. -

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

##### § 3. Competition is the Priority. -

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

7563 selection process. The criteria, factors, and basis for consideration of best value and the process for the  
7564 consideration of best value shall be as stated in the procurement solicitation.

7565 § 4. Definitions. -

7566 As used in these Rules:

7567 "Affiliate" means an individual or business that controls, is controlled by, or is under common  
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.

7574 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,  
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  
7577 proprietorship operated for profit.

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  
7586 can be reasonably anticipated to submit proposals in response to the particular request. Public notice  
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  
7603 or more offerors whose professional qualifications and proposed services are deemed most meritorious.  
7604 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory  
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  
7608 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and  
7609 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly  
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  
7621 contracts satisfactory and advantageous to the Institution for environmental, location, design and  
7622 inspection work regarding construction of infrastructure projects may be negotiated and awarded based  
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 anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.

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

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

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

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

3. Public opening and announcement of all bids received.

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

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

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

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

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

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

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

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

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

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 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

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  
7695 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
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  
7705 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7706 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction  
7707 adopted by the governing body of the Covered Institution.

7708 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
7709 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
7710 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
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.

7726 D. Construction may be procured only by competitive sealed bidding, except that competitive  
7727 negotiation may be used in the following instances upon a determination made in advance by the  
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

7732 3. By the Institution for the construction of highways and any draining, dredging, excavation,  
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  
7741 system, or published in a newspaper of general circulation on the day the Institution awards or  
7742 announces its decision to award the contract, whichever occurs first. Public notice shall also be  
7743 published on the Department of General Services' website for the Commonwealth's central electronic  
7744 procurement system and may be published on other appropriate websites.

7745 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
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

selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

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

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

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

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

§ 6. Cooperative procurement. -

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

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

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

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

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

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

B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their

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  
7826 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the  
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  
7832 Business Enterprise, the United States Small Business Administration, and other public or private  
7833 agencies. The Institution shall submit annual progress reports on minority business procurement to the  
7834 Department of Minority Business Enterprise.

7835 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
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. -

7844 The Institution shall include in every contract of more than \$10,000 the following provisions:

7845 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  
7853 contractor, will state that such contractor is an equal opportunity employer.

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.

7856 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every  
7857 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
7858 subcontractor or vendor.

7859 § 11. Drug-free workplace to be maintained by contractor; required contract provisions.-

7860 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  
7868 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be  
7869 binding upon each subcontractor or vendor.

7870 For the purposes of this section, "drug-free workplace" means a site for the "performance of work



done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

§ 12. Use of brand names. -

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

§ 13. Comments concerning specifications. -

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

§ 14. Prequalification generally; prequalification for construction. -

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

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

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

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

At least 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.

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

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

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

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

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

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

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 6. 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.

7956 § 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  
7969 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and  
7970 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

7971 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets  
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 A. In determining the award of any contract for paper and paper products to be purchased for use  
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.

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  
8006 consideration if the price bid would have been substantially lower than the other bids due solely to the  
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  
8009 objective evidence drawn from inspection of original work papers, documents and materials used in the  
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  
8019 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened  
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  
8033 labor to or perform any subcontract or other work agreement for the person or firm to whom the  
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.

8067 § 27. Public construction contract provisions barring damages for unreasonable delays declared void.

8068 -

8069 A. Any provision contained in any public construction contract of the Institution that purports to  
8070 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable  
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 B. Subsection A shall not be construed to render void any provision of a public construction  
8075 contract awarded by the Institution that:

8076 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the  
8077 contractor, or its subcontractors, agents or employees;

8078 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 C. A contractor making a claim against the Institution for costs or damages due to the alleged  
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  
8090 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution  
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,  
8111 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a  
8112 form and amount satisfactory to the Institution.

8113 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of  
8114 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom  
8115 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the  
8116 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied

or performed in the furtherance of the work.

"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 contractor that are authorized to do business in Virginia.

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 bonds for construction contracts below \$1 million.

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

§ 30. Alternative forms of security. -

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 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 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts. -

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

§ 32. Action on performance bond. -

No action against the surety on a performance bond shall be brought by the Institution unless 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.

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

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

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

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

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

§ 34. Public inspection of certain records. -

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

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

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event

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  
8186 reasonable restrictions to ensure the security and integrity of the records.

8187 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection  
8188 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14  
8189 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the  
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. -

8194 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  
8202 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
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 5. The purchase of goods and services by the Institution when such purchases are made under a  
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  
8217 contracts with faith-based organizations for the purposes described in this section on the same basis as  
8218 any other nongovernmental source without impairing the religious character of such organization, and  
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  
8222 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
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 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
8230 purchase orders prominently display a nondiscrimination statement indicating that it does not  
8231 discriminate against faith-based organizations.

8232 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any  
8233 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on  
8234 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on  
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  
8237 the faith-based organization segregates public funds into separate accounts, only the accounts and  
8238 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii)  
8239 shall be construed to ~~supersede~~ *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.

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 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

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

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 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 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 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 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections 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:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
  - c. Private educational institutions; or
  - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
8. Royalties; or

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 institution 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 original manufacturer/developer offers the service.*

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

The Institution may enter into contracts for insurance or electric utility service without competitive 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 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 Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

§ 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.

"Debtor" means any individual, business, or group having a delinquent debt or account with any state

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.  
8318 Payment shall be deemed to have been made when offset proceedings have been instituted, as  
8319 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.  
8320 B. Separate payment dates may be specified for contracts under which goods or services are  
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. -  
8324 In instances where there is a defect or impropriety in an invoice or in the goods or services received,  
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. -  
8332 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 a. Pay the subcontractor for the proportionate share of the total payment received from the  
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 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,  
8348 interest shall accrue at the rate of 1% per month."  
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



the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

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

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 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.

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

#### § 47. Ineligibility. -

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

Within 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 ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

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

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

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

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

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

#### § 49. Determination of nonresponsibility. -

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

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  
8435 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures  
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.

8441 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the  
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  
8467 upon information contained in public records pertaining to the procurement transaction that are subject  
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  
8470 such later time as provided in this section. No protest shall lie for a claim that the selected bidder or  
8471 offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest  
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  
8477 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. 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  
8481 sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it  
8482 to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or  
8483 capricious, then the sole relief shall be as hereinafter provided.

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

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  
 8501 proceeding without delay is necessary to protect the public interest or unless the bid or offer would  
 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. A bidder or offeror, actual or prospective, who is refused permission or disqualified from  
 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  
 8531 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of  
 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

petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

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

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

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

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

§ 55. Administrative appeals procedure. -

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

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

§ 56. Alternative dispute resolution. -

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

§ 57. Ethics in public contracting. -

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

#### EXHIBIT L

#### MANAGEMENT AGREEMENT

#### BETWEEN

#### THE COMMONWEALTH OF VIRGINIA

#### AND

#### THE COLLEGE OF WILLIAM AND MARY

#### PURSUANT TO

#### THE RESTRUCTURED HIGHER EDUCATION

#### FINANCIAL AND ADMINISTRATIVE OPERATIONS

#### ACT OF 2005

#### POLICY GOVERNING

#### FINANCIAL OPERATIONS AND MANAGEMENT

#### THE RECTOR AND BOARD OF VISITORS

#### OF THE COLLEGE OF WILLIAM AND MARY

#### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

#### I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter

4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

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

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

## II. DEFINITIONS.

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

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

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

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

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

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

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

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

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

## III. SCOPE OF POLICY.

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

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

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

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

## V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, or designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of College financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the College and the allocation and utilization of resources within the accounting system, including the

relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the College pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.

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

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

#### VI. FINANCIAL MANAGEMENT POLICIES.

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

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

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

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the 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.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been

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

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

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

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

iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the College'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 receipt of the required State Council of Higher Education for Virginia certification that the College has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund 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 § 2.2-5005, after which time the College may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the College in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 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.

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 pay these funds to the College as specified in Section IX below.

The College also shall have sum sufficient appropriation authority for all non-general funds as 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 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of 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 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.

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 College that the College shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the College that the College shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the College by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.

The President, or designee, shall continue to provide oversight of the College's cash management

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.

8798 For the receipt of general and non-general funds, the College shall conform to the Security for Public  
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  
8804 College financial resources. The policies shall be guided by the requirements of the Virginia Debt  
8805 Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the College shall take  
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  
8816 summary report of receivables to the Department of Accounts in accordance with the reporting  
8817 procedures established pursuant to the Virginia Debt Collection Act.

#### 8818 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  
8821 disbursement management policies shall continue to define the appropriate and reasonable uses of all  
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  
8828 replacement for the CARS system for disbursements, the College shall establish its own mechanisms for  
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  
8848 Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a  
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



programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the College shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The College shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

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

#### X. DEBT MANAGEMENT.

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

Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its 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 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this 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 comment prior to its adoption by the College.

The College recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, or designee, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the College's objectives. Regardless of the financing structure(s) utilized, the President, or designee, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the 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 of the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

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

#### XI. INVESTMENT POLICY.

It is the policy of the College to invest its operating and reserve funds solely in the interest of the 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 (§ 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 aims.

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

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

#### XII. INSURANCE AND RISK MANAGEMENT.

By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the College through the Commonwealth's Division of Risk Management and in which the College is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from

any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College proceeds to withdraw from the insurance or risk management program, the College shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and the Commonwealth.

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 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 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.

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, 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 for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act, 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 of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the Existing Policy Statement).

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as (State Agency 207).

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the University of Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

"Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as (State Agency 246).

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.

"Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.

"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

### III. SCOPE OF POLICY.

This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.

This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.

### IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.

### V. CAPITAL PROGRAM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.

It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be

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  
9050 then applicable, and shall follow the State's process for capital budget requests.

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.

9100 VIII. DESIGN REVIEWS AND CODE APPROVALS.

The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.

The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee *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 Official, it shall fulfill the code review requirement by maintaining a review unit *of licensed professional architects or engineers supported by resources and staff* who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired *under the University's personnel system as a member of 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 functions for the University ~~on the same capital project~~.

#### IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of \$300,000 or more.

#### X. BUILDING DEMOLITIONS.

It shall be the policy of the University to consider the environmental and historical aspects of any 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 Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.

#### XI. BUILDING OR LAND ACQUISITIONS.

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. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies

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  
9166 locality may reasonably request and reviewing any requests by the locality with regard to any such  
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  
9173 that, in the case of capital projects involving the acquisition of buildings or land, the project  
9174 management systems implemented under Section XIII below provide for a review of the following  
9175 matters prior to acquisition of the building or land: that any land can be developed for its intended  
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  
9185 insurance shall be procured from a title insurance company authorized to do business in the  
9186 Commonwealth. Based upon the survey and title examination or report, the President, acting through the  
9187 Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real  
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  
9211 appropriate and timely reports to the President, acting through the Executive Vice President and Chief  
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  
9217 appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project  
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  
9220 Supported Debt, and such improvements or renovations are undertaken entirely with funds not  
9221 appropriated by the General Assembly and, if the cost of such improvements or renovations is  
9222 reasonably expected to exceed two million dollars, the decision to undertake such improvements or  
9223 renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine,

the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

# 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

In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:

#### § 1. Purpose. -

The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.

#### § 2. Scope of Procurement Authority. -

Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.

#### § 3. Competition is the Priority. -

To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

#### § 4. Definitions. -

As used in these Rules:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be

9285 procured, specifying the factors that will be used in evaluating the proposal and containing or  
9286 incorporating by reference the other applicable contractual terms and conditions, including any unique  
9287 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  
9296 projects shall be conducted using a qualification-based selection process. The Institution shall engage in  
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  
9319 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under  
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  
9332 nature of the work is such that the best interests of such Institution require awarding the contract.

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 specifications  
9346 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided



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 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of  
 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.

9382 "Multiphase professional services contract" means a contract for the providing of professional  
 9383 services where the total scope of work of the second or subsequent phase of the contract cannot be  
 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  
 9403 enforceable in a court of law.

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 prequalified, if required.

9407 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects

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.

9418 "Services" means any work performed by an independent contractor wherein the service rendered  
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;  
9436 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  
9443 available, and identifying that which is being procured, the contractor selected, and the date on which  
9444 the contract was or will be awarded. This notice shall be posted in a designated public area, which may  
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.

9450 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
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 G. The Institution may establish purchase procedures, if adopted in writing, not requiring  
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 H. The Institution may establish purchase procedures, if adopted in writing, not requiring  
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.

I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

§ 6. Cooperative procurement. -

A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and

2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.

§ 7. Design-build or construction management contracts authorized. -

A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.

B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

§ 8. Modification of the contract. -

A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.

§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis

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. -

9549 The Institution shall include in every contract of more than \$10,000 the following provisions:

9550 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  
9553 discrimination in employment, except where there is a bona fide occupational qualification reasonably  
9554 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places,  
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 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every  
9562 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
9563 subcontractor or vendor.

9564 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. -

9565 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. -

9587 The Institution shall establish procedures whereby comments concerning specifications or other  
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

prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 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.

A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 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;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.

§ 15. Negotiation with lowest responsible bidder. -

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

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.

9661 § 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  
9665 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a  
9666 prospective insurer pursuant to § 18.

9667 § 18. Debarment. -

9668 Prospective contractors may be debarred from contracting for particular types of supplies, services,  
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  
9674 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and  
9675 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

9676 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets  
9677 Development Council, shall advise the Institution concerning the designation of recycled goods.

9678 § 20. Preference for Virginia products with recycled content and for Virginia firms. -

9679 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or  
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  
9691 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more  
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  
9697 for the purpose intended, so long as the price is not more than 10% greater than the price of the low  
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.

One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.

D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

§ 24. Contract Pricing Arrangements. -

A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.

B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

§ 25. Workers' compensation requirements for construction contractors and subcontractors. -

A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia.

§ 26. Retainage on construction contracts. -

A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% 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.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

§ 27. Public construction contract provisions barring damages for unreasonable delays declared void.

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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

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 B. Subsection A shall not be construed to render void any provision of a public construction  
9780 contract awarded by the Institution that:

9781 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the  
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 C. A contractor making a claim against the Institution for costs or damages due to the alleged  
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.

9823 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but  
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.

9828 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

9829 E. Nothing in this section shall preclude the Institution from requiring payment or performance  
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. -

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.



B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts. -

The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

§ 32. Action on performance bond. -

No action against the surety on a performance bond shall be brought by the Institution unless 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.

§ 33. Actions on payment bonds; waiver of right to sue. -

A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

§ 34. Public inspection of certain records. -

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

§ 35. Exemption for certain transactions. -

A. The provisions of these Rules shall not apply to:

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 2. 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 3. Procurement of any construction or planning and design services for construction by the  
9907 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is  
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 5. The purchase of goods and services by the Institution when such purchases are made under a  
9912 remedial plan established by the Governor pursuant to subsection C of § 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 C. 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 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
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  
9938 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on  
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  
9959 disbursements provided pursuant to a contract between the Institution and a faith-based organization a  
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 subsections  
 9969 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:

9971 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the  
 9972 Blind and Vision Impaired;

9973 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported  
 9974 employment 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 of  
 9980 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,  
 9984 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  
 9987 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

9988 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. -

10003 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  
 10016 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  
 10019 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.

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 B. Separate payment dates may be specified for contracts under which goods or services are  
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  
10032 invoice or the goods or services.

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.

10036 § 45. Payment clauses to be included in contracts. -

10037 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 a. Pay the subcontractor for the proportionate share of the total payment received from the  
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 4. 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.

10057 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause  
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  
10067 corporate loans (prime rate) at large United States money center commercial banks as reported daily in  
10068 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of  
10069 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of  
10070 interest established pursuant to § 58.1-1812 of the Code of Virginia.

10071 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed  
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  
10081 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the  
10082 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the  
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

at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

§ 47. Ineligibility. -

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within 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 ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

§ 48. Appeal of denial of withdrawal of bid. -

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

§ 49. Determination of nonresponsibility. -

A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within 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 responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award. -

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 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 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 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 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 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract. -

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest. -

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 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.

B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.

D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

§ 54. Legal actions. -

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.

E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure. -

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.

§ 56. Alternative dispute resolution. -

The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting. -

The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

#### ATTACHMENT 2

##### Memorandum of Agreement

##### The Commonwealth of Virginia and the University of Virginia

##### ERP/SciQuest Implementation with eVA

The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the following:

I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Oracle).

II. Initially, all 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. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.

III. The University may request that eVA contract vendors provide a version of their contract catalog for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA.

IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA.

V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense. The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.

VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the eVA Business Plan as follows:

A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the



appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will pay the eVA transaction fees for these orders.

For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or CGI-AMS.

The University further agrees that:

1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

3. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

VII. The University will not require separate vendor registrations as a prerequisite for responding to University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to entities. The University will have the option to receive a subset of vendor related data. Until an enterprise W-9 process is established, the University will be responsible for collection of W-9 information.

VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.

IX. Integration of the University's electronic procurement solution with the University's ERP is the responsibility of the University. The solution must provide for orders, change orders and cancellations.

Guidelines

1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.

2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements for unregistered vendor orders.

4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA standard format.

5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

6. eVA Interface standard does not currently support PCard orders; however these orders may be processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.

Schedule

The University shall implement this agreement no later than December 2006.

Metrics

A. The University shall comply with the following Governor's eVA Management:

Objective

~~Ninety-five~~Eighty 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 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

B. The University shall meet the following management objectives for electronic procurement:

1. Provide end users, including purchase-card users, access to an electronic system for buying;

2. Conduct business with eVA registered vendors whenever possible;

- 10392 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically  
10393 using eVA;
- 10394 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 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to  
10400 monitor the usage of confirming orders with the objective of reducing their numbers to the extent  
10401 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 CGI-AMS.
- 10406 The University further agrees that:
- 10407 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 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
- 10412 c. In the event the University does not provide resolution notification to the eVA Business Manager  
10413 (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 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as  
10417 specifically exempted by DPS;
- 10418 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 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10  
10423 below);
- 10424 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 12. Timely remit any eVA transaction and non-use fees incurred by the institution.
- 10428 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.

## EXHIBIT R

### MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND

### THE UNIVERSITY OF VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

### POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

### THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

#### I. PREAMBLE.

10449 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  
10451 additional authority to institutions of higher education for financial operations and management, subject  
10452 to the adoption of policies by their governing boards and the approval of management agreements to be  
10453 negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.

## II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as (State Agency 207).

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as (State Agency 246).

"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.

"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University and the Commonwealth of Virginia.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

## III. SCOPE OF POLICY.

This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.

The University of Virginia's College at Wise shall receive the benefits of this Policy as it is implemented by the University on behalf of the College at Wise, but the College at Wise shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the University's initial Management Agreement with the Commonwealth or that it may be granted by law in the future.

## IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.

## V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance

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  
10517 to the establishment of the underlying accounting records of the University and the allocation and  
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 statements. To ensure observance of limitations and restrictions placed on the use of the resources  
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  
10537 Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing  
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.

#### 10548 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.

10572 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher  
10573 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General  
10574 Assembly the degree to which each public institution of higher education of the Commonwealth has met  
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 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:

i) The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.

ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below.

iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. *Interest earned on the escrow account shall be deposited to the account.* Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund 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 § 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 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 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.

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 pay these funds to the University as specified in Section IX below.

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 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 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 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.

The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability

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.

10649 For the receipt of general and non-general funds, the University shall conform to the Security for  
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  
10661 principles; and the independent authority to select and contract with collection agencies and, after  
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  
10673 for the management of University financial resources. The disbursement management policies shall  
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*  
10693 *bimonthly pay dates*, and up to 50% of its annual general fund appropriation for Student Financial  
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 ii) The University may draw down the sum of all tuition and E&G fees and all other non-general  
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

is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.

#### X. DEBT MANAGEMENT.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a 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, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its 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 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.

The University recognizes that there are numerous types of financing structures and funding sources 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 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 Executive Vice President and Chief Operating Officer, 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 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 by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

The University currently has established guidelines relating to the total permissible amount of 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 regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt capacity and debt management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.

#### XI. INVESTMENT POLICY.

It is the policy of the University to invest its operating and reserve funds solely in the interest of the 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

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  
10768 intent during the next biennium to withdraw from any insurance or risk management program made  
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  
10774 the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the  
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*  
10781 *not received, this Management Agreement shall continue in effect until June 30, 2015.* The expiration of  
10782 such enactments shall automatically result in the expiration of the provisions of any management  
10783 agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The  
10784 College of William and Mary in Virginia, and The University of Virginia, respectively, which was  
10785 entered into prior to January 1, 2006, and incorporated into this Act.

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.*

10793 ATTACHMENT 1

10794 Rules Governing Procurement of Goods, Services, Insurance, and Construction  
10795 by a Public Institution of Higher Education of the Commonwealth of Virginia

10796 Governed by Subchapter 3 of the

10797 Restructured Higher Education Financial and Administrative Operations Act,  
10798 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia

10799  
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  
10802 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the  
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:

10807 § 1. Purpose.

10808 The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods,  
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  
10816 § 23-38.88 and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be  
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



procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

#### § 4. Definitions.

As used in these Rules:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or costs for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may

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  
10888 Request 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  
10896 fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the  
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  
10906 provided in the Request for Proposal, awards may be made to more than one offeror. Should the  
10907 Institution determine in writing and in its sole discretion that only one offeror has made the best  
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  
10913 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite  
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  
10932 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

10933 "Construction management contract" means a contract in which a party is retained by the owner to  
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

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  
 10949 services where the total scope of work of the second or subsequent phase of the contract cannot be  
 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.

10968 "Public contract" means an agreement between the Institution and a nongovernmental source that is  
 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.

10975 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative  
 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  
 11006 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed

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  
11010 the contract was or will be awarded. This notice shall be posted in a designated public area, which may  
11011 be the Department of General Services' website for the Commonwealth's central electronic procurement  
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  
11014 published on the Department of General Services' website for the Commonwealth's central electronic  
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  
11017 competitive negotiation; however, such procurement shall be made with such competition as is  
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  
11030 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;  
11031 however, such small purchase procedures shall provide for competition wherever practicable.

11032 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive  
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.

11036 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase  
11037 of goods, products or commodities from a public auction sale is in the best interests of the public, such  
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  
11048 public or private organizations or entities, including public-private partnerships, charitable organizations,  
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  
11052 administrative expense in any acquisition of goods and services, other than professional services. The  
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  
11065 Institution's business goals and objectives, and as authorized by the United States Congress and  
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

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.

11083 § 8. Modification of the contract.

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  
11096 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis  
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  
11112 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination  
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.

11115 The Institution shall include in every contract of more than \$10,000 the following provisions:

11116 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.

11127 2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every  
11128 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each  
11129 subcontractor or vendor.

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions.

The Institution shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

§ 12. Use of brand names.

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

§ 13. Comments concerning specifications.

The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

§ 14. Prequalification generally; prequalification for construction.

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 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.

A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 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.) of the Code of Virginia, (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;

7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.

§ 15. Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. Cancellation, rejection of bids; waiver of informalities.

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited.

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.

§ 18. Debarment.

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.

§ 19. Purchase programs for recycled goods; Institution responsibilities.

A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.

§ 20. Preference for Virginia products with recycled content and for Virginia firms.

A. In the case of a tie bid, preference shall be given to goods produced in Virginia and goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference

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  
11264 lowest responsive and responsible bidder or offeror offering a product that does not qualify under  
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  
11278 consideration if the price bid would have been substantially lower than the other bids due solely to the  
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  
11287 designated official his original work papers, documents and materials used in the preparation of the bid  
11288 within one day after the date fixed for submission of bids. The work papers shall be delivered by the  
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  
11291 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened  
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  
11294 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour  
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.

11312 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other  
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



be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

§ 25. Workers' compensation requirements for construction contractors and subcontractors.

A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia.

§ 26. Retainage on construction contracts.

A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95 percent of the earned sum when payment is due, with no more than 5 percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

§ 27. Public construction contract provisions barring damages for unreasonable delays declared void.

A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.

§ 28. Bid bonds.

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 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 percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.

§ 29. Performance and payment bonds.

A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million

11376 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to  
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  
11387 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied  
11388 or performed in the furtherance of the work.

11389 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but  
11390 only for periods when the equipment rented is actually used at the site.

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.

11394 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  
11421 days after the day on which the claimant performed the last of the labor or furnished the last of the  
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.

11435 C. Any action on a payment bond shall be brought within one year after the day on which the  
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

it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

§ 34. Public inspection of certain records.

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

§ 35. Exemption for certain transactions.

A. The provisions of these Rules shall not apply to:

1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.

4. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.

§ 36. Permitted contracts with certain religious organizations; purpose; limitations.

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

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  
 11501 discriminate against faith-based organizations.

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  
 11508 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii)  
 11509 shall be construed to supersede or otherwise override any other applicable state law.

11510 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,  
 11511 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent  
 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  
 11515 any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization  
 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  
 11528 against you on the basis of religion, a religious belief, or your refusal to actively participate in a  
 11529 religious practice. If you object to a particular provider because of its religious character, you may  
 11530 request assignment to a different provider. If you believe that your rights have been violated, please  
 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:

11535 1. The purchase of goods or services that are produced or performed by or related to:

11536 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the  
 11537 Blind and Vision Impaired;

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  
 11555 such documentation includes a statement signed by the buyer indicating that no firm other than the  
 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.

11572 "Payment date" means either (i) the date on which payment is due under the terms of a contract for  
 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.

11576 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to  
 11577 whom the contract was awarded or to any subcontractor in the performance of the work provided for in  
 11578 such contract.

11579 § 40. Exemptions.

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.

11583 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall  
 11584 remain valid.

11585 § 42. Prompt payment of bills by the Institution.

11586 A. The Institution shall promptly pay for the completely delivered goods or services by the required  
 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.

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  
11633 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of  
11634 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of  
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  
11639 exception from the interest penalty provided by this subsection shall apply only to that portion of a  
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.

11645 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or  
11646 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the  
11647 Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the  
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  
11654 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the  
11655 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the  
11656 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,  
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  
11666 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The  
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.

11675 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final  
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

honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

§ 49. Determination of nonresponsibility.

A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within 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 responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 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 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 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror 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  
11756 declare the contract void upon a finding that this action is in the best interest of the public. Where a  
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.

11768 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event  
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.

11774 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than  
11775 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be  
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.

11797 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from  
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  
11804 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously  
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



accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.

E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure.

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, 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 of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.

§ 56. Alternative dispute resolution.

The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting.

The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

#### EXHIBIT F

#### MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND VIRGINIA COMMONWEALTH UNIVERSITY PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION

FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY  
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Virginia Commonwealth University's financial operations and management.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth University.

"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ 2.2-2817.2 and 2.2-2905.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University and the Commonwealth of Virginia.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 2006 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means Virginia Commonwealth University.

III. SCOPE OF POLICY.

This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, acting through the Senior Vice President for Finance and Administration or other 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,

with regard to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and (iv) ensure compliance with the requirements of the Appropriation Act.

The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.

In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Senior Vice President for Finance and Administration or other designee, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) monthly summary reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

#### VI. FINANCIAL MANAGEMENT POLICIES.

The President, acting through the Senior Vice President for Finance and Administration or other designee, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.

#### VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

Under subsection A of § 23-38.104 of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and

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 years 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  
12006 place at the time of such deposit.

12007 2. Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section  
12008 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  
12011 and General Revenues. *Interest earned on the escrow account shall be deposited to the account.* Upon  
12012 receipt of the required State Council of Higher Education for Virginia certification that the University  
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.

12022 4. If in any given year the University does not receive the certification from the State Council of  
12023 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by  
12024 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall  
12025 transfer to the general fund the balance in the escrow account as of June 30 of that year.

12026 5. Beginning on the effective date of its initial management agreement with the University until the  
12027 beginning of the first fiscal year following the fiscal year for which it has received the required  
12028 certification from SCHEV, the University shall continue to deposit tuition and all other non-general  
12029 funds with the State Treasurer by the same process that it would have been required to use if it had not  
12030 entered into a management agreement with the Commonwealth.

12031 6. On the first business day of the first fiscal year following the fiscal year for which it has received  
12032 the required certification from SCHEV, the University may draw down all cash balances held by the  
12033 State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored  
12034 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 pay  
12036 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  
12038 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations  
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,  
12050 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the  
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.

The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Assurance Services Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.

For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.

#### VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.

#### IX. DISBURSEMENT MANAGEMENT.

The President, through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The drawing down of funds may be initiated in accordance with the following schedule:

1. 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 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 Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;

2. The University may draw down the sum of all tuition and E&G fees and all other non-general fund revenues deposited to the State Treasury each day on the same business day they were deposited; and

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  
12117 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in  
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  
12122 consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may  
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  
12127 financial and operations policies to the State Comptroller for review and comment prior to implementing  
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  
12135 Effective Date of its initial management agreement with the Commonwealth, the University shall  
12136 continue to follow the Commonwealth's disbursement policies until such time as specific alternative  
12137 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the  
12138 State Comptroller for review and comment prior to their implementation by the University.

#### 12139 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.

12143 Pursuant to subsection B of § 23-38.108 of the Act, the University shall have the authority to issue  
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,  
12147 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any  
12148 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided  
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  
12161 capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and  
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  
12169 current policy shall be submitted to the Treasurer of Virginia for review and comment prior to their  
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  
12174 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act  
12175 (§ 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 aims.

Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ 55-268.1 through 55-268.10 and § 23-76.1 of the Code of Virginia.

The Board of Visitors shall periodically review and approve the investment guidelines governing the University's operating and reserve funds.

## XII. INSURANCE AND RISK MANAGEMENT.

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 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 of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from 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 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University 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.

**4. That § 4.3, Attachment 1 of Exhibit D, and Exhibit F of the first enactment, and the third enactment of Chapter 616 of the Acts of Assembly of 2008 are amended and reenacted as follows:**

SECTION 4.3. Term of Agreement. This Management Agreement 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.*

### 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

In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution:

#### § 1. Purpose.

The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.

#### § 2. Scope of Procurement Authority.

Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to subdivision D 4 of § 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, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.

§ 3. Competition is the Priority.

To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

§ 4. Definitions.

As used in these Rules:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or costs for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.



A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.

Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Covered Institution" or "Institution" means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.

"Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.

"Goods" means all material, equipment, supplies, and printing, including information technology and

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  
12373 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the  
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  
12395 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
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.

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.

12412 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  
12415 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally  
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

is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.

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 practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

#### § 6. Cooperative procurement.

A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such

12483 purchases:

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  
12518 programs established shall be in writing and shall include cooperation with the Department of Minority  
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.

12531 The Institution shall include in every contract of more than \$10,000 the following provisions:

12532 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 prequalification 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  
12584 request, by checking the appropriate box, that all information voluntarily submitted by the contractor  
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  
12602 from such procurement. If a bond is required to ensure performance of a contract, evidence that the  
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  
12605 establish the financial ability of the contractor to perform the contract resulting from such procurement;

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  
12622 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental  
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.

12642 B. The Institution may waive informalities in bids.

12643 § 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  
12647 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a  
12648 prospective insurer pursuant to § 18.

12649 § 18. Debarment.

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  
12656 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and  
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  
12666 lowest responsive and responsible bidder who is a resident of Virginia.

12667 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where

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.

12676 § 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.

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  
 12712 materials delivered as required herein.

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

12729 basis that is not prohibited by these Rules.

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.

12741 B. The Department of General Services shall provide the form to the Institution. Failure of the  
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;

12766 3. Provides for liquidated damages for delay; or

12767 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.

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.



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:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

"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 contractor that are authorized to do business in Virginia.

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 bonds for construction contracts below \$1 million.

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 conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

§ 30. Alternative forms of security.

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash 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 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts.

The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

§ 32. Action on performance bond.

No action against the surety on a performance bond shall be brought by the Institution unless 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.

§ 33. Actions on payment bonds; waiver of right to sue.

A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the

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  
12858 relating to procurement transactions shall be open to the inspection of any citizen, or any interested  
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.

12863 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect  
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.

12874 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection  
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.

12881 A. The provisions of these Rules shall not apply to:

12882 1. The selection of services related to the management and investment of the Institution's endowment  
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  
12900 these Rules in conflict with the conditions of the grant or contract.

12901 § 36. Permitted contracts with certain religious organizations; purpose; limitations.

12902 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into  
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  
12908 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
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

religious freedom by the recipients of such goods, services, or disbursements.

D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.

E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to 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.

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 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

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 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 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 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 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions.

The Institution may enter into contracts without competition, as that term is described in subsections 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:
    - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
    - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
    - c. Private educational institutions; or
    - d. Other public educational institutions.
  2. Speakers and performing artists;
  3. Memberships and Association dues;
  4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
  5. Group travel in foreign countries;
  6. Conference facilities and services;
  7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
  8. Royalties; or
  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 institution 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 original manufacturer/developer offers the service.*
- § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain 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:

12985 "Contractor" means the entity that has a direct contract with the Institution.

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  
13012 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the  
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:

13022 a. Pay the subcontractor for the proportionate share of the total payment received from the Institution  
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

interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions.

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the 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.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

§ 47. Ineligibility.

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within 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 ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 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.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

§ 48. Appeal of denial of withdrawal of bid.

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released

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  
13107 low bidder is responsible. If the Institution so determines, then it may proceed with an award in  
13108 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution  
13109 determines that the apparent low bidder is not responsible, it shall proceed as follows:

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  
13113 relate to the determination, if so requested by the bidder within five business days after receipt of the  
13114 notice.

13115 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
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  
13121 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures  
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.

13144 A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall  
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  
13153 upon information contained in public records pertaining to the procurement transaction that are subject  
13154 to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall  
13155 expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at  
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

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 validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 53. Contractual disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 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.

B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.

D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

§ 54. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously

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  
13256 written decision containing findings of fact. The disinterested person or panel shall not be an employee  
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



THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY  
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Virginia Commonwealth University's financial operations and management.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth University.

"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ 2.2-2817.2 and 2.2-2905.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University and the Commonwealth of Virginia.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 2006 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means Virginia Commonwealth University.

III. SCOPE OF POLICY.

This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, acting through the Senior Vice President for Finance and Administration or other 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  
13366 Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing  
13367 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems  
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.

#### 13377 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  
13384 financial management. These policies shall include, but need not be limited to, the development of a  
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  
13401 general funds to be allocated to the University shall remain subject to the appropriations process.

13402 Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher  
13403 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General  
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

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 12 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues (excluding gift, agency and endowment funds and the investment income thereon) subject to the following requirements:

1. The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.

2. Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below.

3. The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. *Interest earned on the on the escrow account shall be deposited to the account.* Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund 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 § 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 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the 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.

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.

7. The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the University as specified in Section IX below.

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 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 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 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.

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  
13477 assessment models and make reports to the Audit Committee of the Board of Visitors. Additional  
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  
13488 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the University shall take all appropriate and  
13489 cost effective actions to aggressively collect accounts receivable in a timely manner.

13490 These shall include, but not be limited to, establishing the criteria for granting credit to University  
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  
13510 mechanisms by which payments are made including the use of charge cards, warrants, and electronic  
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  
13513 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the  
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*  
13524 *bimonthly pay dates*, and up to 50 percent of its annual general fund appropriation for Student Financial  
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;

and

3. The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a time frame agreeable to the parties, in order to cover expenditures.

These disbursement policies shall authorize the President, acting through the Senior Vice President for Finance and Administration or other designee, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial management agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.

#### X. DEBT MANAGEMENT.

The President, acting through the Senior Vice President for Finance and Administration or other designee, is authorized to create and implement any and all debt management policies as part of a 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 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 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 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.

The University recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Senior Vice President for Finance and Administration or other designee, within the 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 Senior Vice President for Finance and Administration or other 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 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 by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

The University currently has established policy relating to the total permissible amount of 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 regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors 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 adoption by the University.

#### XI. INVESTMENT POLICY.

It is the policy of the University to invest its operating and reserve funds solely in the interest of the University and in a manner that will provide the highest investment return with the maximum security

13590 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act  
13591 (§ 2.2-4500 et seq.) of the Code of Virginia. Investments shall be made with the care, skill, prudence  
13592 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and  
13593 familiar with such matters would use in the conduct of an enterprise of a like character and with like  
13594 aims.

13595 Endowment investments shall be invested and managed in accordance with the Uniform Management  
13596 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 the  
13598 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  
13601 intent during the next biennium to withdraw from any insurance or risk management program made  
13602 available to the University through the Commonwealth's Division of Risk Management and in which the  
13603 University is then participating, to enable the Commonwealth to complete an adverse selection analysis  
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.

13610 3. That the provisions of the first enactment of this Act shall expire at midnight on June 30, 2012,  
13611 *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House*  
13612 *Committee on Appropriations and the Senate Committee on Finance written notification that this*  
13613 *Management Agreement needs to be renegotiated or revised. If such notification is not received, this*  
13614 *Management Agreement shall continue in effect until June 30, 2015.* The expiration of such enactment  
13615 shall automatically result in the expiration of the provisions of any management agreement between the  
13616 Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008,  
13617 and incorporated into this Act.