UNIVERSITY OF VIRGINIA

MANAGEMENT AGREEMENT

November 15, 2005
November 15, 2005

The Honorable John H. Chichester
Chair, Senate Finance Committee
General Assembly Building
Post Office Box 396
Richmond, VA 23218

Dear John:

In compliance with the Restructured Higher Education Financial and Administrative Operations Act of 2005, I am forwarding to you an executed Management Agreement between the University of Virginia and the Commonwealth. In addition to the management agreement, policies and performance measures in the operational areas of capital projects, leases, information technology, procurement, human resources, and finance and accounting are enclosed.

On November 7, 2005, the Board of Visitors Executive Committee passed a resolution to approve these documents and authorize the President and/or Executive Vice President and Chief Operating Officer, with the concurrence of the Rector, to make any required changes to the documents between the date of the Committee’s approval and the effective date of the management agreement. All changes will be subsequently reported to the Board. For your reference, a copy of the resolution is included with the submitted materials. We appreciate the opportunity this legislation has afforded us to work with the Commonwealth for the continued advancement of higher education. If you have any questions about these materials, please do not hesitate to contact me, Leonard Sandridge, or Colette Sheehy.

Sincerely,

John T. Casteen III
President

JTC:jdb
Enclosures
cc: The Honorable Mark R. Warner

Same letter sent to:
The Honorable Vincent F. Callahan, Jr.
The Honorable H. Russell Potts, Jr.
The Honorable Robert Tata
The Rector opened the meeting by recalling for Members the meeting of the full Board on September 24th, at which the University’s Six Year Institutional Plan was approved in fulfillment of one of the requirements of the Restructuring Act approved by the General Assembly at its 2005 Session. The other requirement, the University’s Management Agreement, could not be approved at the meeting because it was still under negotiation with the appropriate authorities in Richmond; the Board, however, authorized the President, and the Executive Vice President and Chief Operating Officer, to pursue these negotiations. (See the Minutes of the meeting of the Board of Visitors, September 24, 2005.)

Mr. Sandridge, the Executive Vice President and Chief Operating Officer, recalled, in addition to the September 24th meeting, the actions taken by the Board at its meeting on June 10th (see the Minutes of the meeting of the Board of Visitors, June 10, 2005). He explained the work done by the University on the Management Agreement, but said that not all of the relevant Cabinet Secretaries in Richmond have completed their reviews. In addition, the Governor is meeting Friday with all of the university presidents, and there may be changes to the proposed Agreement as a result of that meeting.

Ms. Sheehy, Vice President for Management and Budget, explained the proposed Agreement in more detail. In response to a question, she said that under the Agreement as proposed, the University will be exempted from the Virginia Public Procurement Act. The University has its own procurement policies which actually are more exacting than the Commonwealth’s.

Ms. Sheehy pointed out that the proposed Board resolution approving the Management Agreement contains language taking into account the possibility of last minute changes by the authorities in Richmond to the Agreement proposed by the University.

On motion, the Executive Committee adopted a resolution approving the Management Agreement, together with its associated policies and performance measures. All Members of the Committee, save one Member who was not present – either at the Rotunda or by telephonic hookup – voted “aye.”

As the Executive Committee is empowered to act on behalf of the full Board, no further action is required. The resolution will be reported at the next meeting of the Board of Visitors as a matter of record.
APPROVAL OF MANAGEMENT AGREEMENT, POLICIES, AND PERFORMANCE MEASURES

WHEREAS, the Restructured Higher Education Financial and Administrative Operations Act includes a provision entitled Subchapter 3, Alternative Authority for Covered Institutions (Va. Code 23-38.91 et. seq.), which sets forth the requirements for a public university or college of this Commonwealth to gain additional authority with concomitant responsibility subject to certain accountability, audit and reporting measures specified by the General Assembly; and

WHEREAS, the Board of Visitors has by resolution committed the University to the state goals set forth in Virginia Code 23-38.88B, and by resolution determined that the University is qualified to be, and should be, governed by the authorizations and requirements set forth in said Subchapter 3 and as otherwise prescribed by law; and, furthermore, attested to the ability of the University to successfully manage its administrative and financial operations in accordance with the requirements of Subchapter 3, accordingly authorizing its President and Executive Vice President and Chief Operating Officer to enter into negotiations to finalize the Management Agreement required by the said Act; and

WHEREAS, the Management Agreement has been approved by the University's President and Executive Vice President and Chief Operating Officer, and approvals by the Cabinet Secretary or Secretaries designated by the Governor of Virginia are anticipated;

RESOLVED, the Board of Visitors, by its Executive Committee as authorized and empowered by state law (Va. Code 23-75), adopts the said approved Management Agreement including its appended policies in the operational areas of capital projects, leases, information technology, procurement, human resources, and finance and accounting, as well as the Performance Measures, and accordingly authorizes the President and/or Executive Vice President and Chief Operating Officer to execute the foregoing on
behalf of the University and its Board of Visitors. In the event of subsequent changes or amendments as may be desired by the Governor or the General Assembly, and if the Executive Committee is unable because of exigent and other circumstances to properly convene in a timely manner, the President and/or Executive Vice President and Chief Operating Officer, with the concurrence of the Rector, is empowered to approve any subsequent changes or amendments which he determines to be in the best interests of the University and that are desired or required by the Governor or the General Assembly between the date of this Resolution and the effective date of the aforesaid Management Agreement, Policies and Performance Measures; provided, the President shall notify the Board of Visitors as soon as practicable of the changes or amendments.

On motion, the meeting was adjourned at 12:00 noon.

AGG:jb

These minutes have been posted to the University of Virginia Board of Visitors website. http://www.virginia.edu/bov/executivecommitteeminutes.html
MANAGEMENT AGREEMENT

BY AND BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

November 15, 2005
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This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the “Commonwealth”) and the Rector and Visitors of the University of Virginia (hereafter, “the University”) provides as follows:

RECITALS

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

1. **Board of Visitors Approval.** The minutes of a meeting of the Board of Visitors of the University held on June 10, 2005, and the accompanying certification of the Secretary of the Board, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subsection A 1 of § 23-38.97 of the Act. True copies of the minutes, the certification and the resolution are attached hereto as Exhibit A;

2. **Written Application to the Governor.** The University has submitted to the Governor a written Application, dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the University is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the University has fulfilled the requirements of paragraph 2 of
subsection A of § 23-38.97 of the Act. A true copy of this written Application is attached hereto as Exhibit B; and

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

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

**AGREEMENT**

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

**ARTICLE 1. DEFINITIONS.**

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

“**Academic Division**” means that part of the University known as State Agency 207.


“**Agreement**” means “Management Agreement.”
“Board of Visitors” means the Rector and Board of Visitors of the University of Virginia.

“College” means that part of the University operated as the University of Virginia’s College at Wise (State Agency 246).

“Covered Employee” means any person who is employed by the University on either a salaried or wage basis.

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

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

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

“Parties” means the parties to this Management Agreement, the Commonwealth of Virginia and the University.

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

“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability. Subchapter 3 of the Act provides that, upon the execution of, and as of the effective date for, this Management Agreement, the University shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.
SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors polices attached hereto as Exhibits C through H, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.

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

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

SECTION 2.1.3. Reimbursement by the University of Certain Costs.

Pursuant to subsection D(2)(c) of § 23-38.88 of the Act, the University agrees to reimburse the Commonwealth an amount mutually agreed upon with the Commonwealth for any additional costs to the Commonwealth in providing health or other group insurance benefits to employees, and in undertaking any risk management program, that are attributable to the University’s exercise of any restructured financial or operational authority set forth in Subchapter 3 of the Act and included in this Management Agreement or the policies adopted by its Board of Visitors and attached hereto as Exhibits C through H.
SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subsection D (2) (c) of § 23-38.88 of the Act, the University has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75 of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to the University and the Commonwealth the Plan’s assumptions underlying the contract pricing of the program.

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

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

**SECTION 2.1.6. Quantification of Cost Savings.** Subsection C of § 23-38.104 of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the University, the parties agree that the University is not in a position to quantify any such cost savings at this time, although the University expects that there will be cost savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.
SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the University shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia’s public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to § 23-30.24 et seq. of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth’s various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth’s higher education institutions, programs, or activities.

As a teaching hospital that is a part of the University as of the Effective Date, the Medical Center shall continue to be characterized as a state government-owned or operated and state-owned teaching hospital for purposes of payments under the State Plan for Medicaid Services adopted pursuant to § 32.1-325 et seq. The University has committed to serve indigent and medically indigent patients through its adoption of the Guidelines for the Eligibility of Indigent and Medically Indigent Persons for Health Care Services at the State University Teaching Hospitals. Pursuant to subsection B of § 23-38.93 of the Act, the Commonwealth, through the Department of Medical Assistance Services, shall, subject to the appropriation in the Appropriation Act in effect, continue to reimburse the full cost of the provision of care, treatment, health-related and educational services to indigent and medically indigent patients and continue to treat the Medical Center as a Type One Hospital for purposes of such reimbursement.
SECTION 2.1.8. Implied Authority. Pursuant to subsection D 1 of § 23-38.88 of the Act, the only implied authority granted to the University by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the University’s Board of Visitors and attached hereto as Exhibits C through H.

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

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

SECTION 2.2. State Goals.

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

1. In addition to its six-year target of achieving $337 million in external research by 2011-12, the University commits to match from institutional funds, on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.

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

3. As an institutional priority and obligation, the University commits to the Governor and General Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in education, income, employment, and other factors. The University commits to establish a formal partnership with that area to develop jointly a specific action plan that builds on the University's programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise to stimulate economic development in the area to make the area more economically viable, and to improve student achievement and teacher and administrator skill sets in a school division in that area. The University shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.
SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § 23-9.2:3.02 of the Code of Virginia, the University, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (“SCHEV”) by October 1, 2005, an institution-specific Six-Year Plan addressing the University’s academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § 23-9.2:3.02 requires the University to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § 23-38.97 of the Act requires that a management agreement address, among other issues, such matters as the University’s in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in the University’s Six-Year Plan submitted to SCHEV, and the parties therefore agree that the University’s Six-Year Plan and the description below meet the requirement of subsection B of § 23-38.97 of the Act.

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

The Academic Division will continue to offer enrollment to in-state undergraduate students without regard to ability to pay and shall continue implementation of AccessUVa, a financial aid program designed to keep higher education affordable for all undergraduate students, including Virginians and non-Virginians, who qualify for admission, regardless of economic circumstance. In the fall 2005 AccessUVa was modified to provide expanded benefits
for qualifying Virginia Community College System transfer students. The program includes the following components:

- The Academic Division currently offers financial aid packages to meet 100 percent of demonstrated need to all qualified undergraduate students. This goal was met in 2004-05.

- The Academic Division will eliminate all need-based loans, replacing them with grants, in the financial-aid packages of low-income undergraduate students, beginning with the fall 2004 entering class. At this time low-income is defined as families with an income equivalent to 200 percent of the federal poverty line or less. This phase will be fully implemented by fall 2007. The University’s goals for this component of the program include:

  1. Increase enrollment by low-income students.
  2. Improve the socio-economic diversity at the University.
  3. Enable low-income financial aid recipients to have an enhanced student experience.
  4. Improve satisfaction in post graduate choices of low-income financial aid recipients.

Success in attaining these goals will be measured by five metrics, 1) applications from low-income students, 2) low-income applicants offered admissions, 3) low-income applicants who accepted offers, 4) yield of low-
income students, and 5) percentage of low-income students in the student body. In 2005-06 applications from low-income students rose 13.1 percent from the previous year for a total of 875. The University offered admission to 357 applicants, 10 percent more than in the prior year. Almost 40 percent more of those low-income students to whom the University offered admission for the 2005-06 academic year accepted the offer, 233 compared to 133 last year, increasing the yield from 50 percent to over 64 percent. The trend in the percentage of low-income students in the student body has also improved over the last two years increasing from 4.29 percent in 2004-05 to 6.45 percent in 2005-06. The University expects to increase the numbers of low-income students enrolled from the current 830 to 1,033 by 2011-12 as outlined in the Six-Year Plan.

- The Academic Division will cap the amount of need-based loans to any undergraduate student who qualifies for some form of financial aid to a maximum of 25 percent of the total in-state cost of attendance over four years and will meet the remaining need with grants, beginning with the fall 2005 first-year or VCCS transfer students. All students, regardless of state residency, will receive the in-state cap level. This phase will be fully implemented by fall 2008. This particular component of the program is targeted at middle-income students whose families earn between $75,000 and $149,999. The University’s goals for this component of the program include:

1. Improve the socio-economic diversity at the University.

2. Enable financial aid recipients to have an enhanced student experience.
3. Improve satisfaction in post graduate choices.

Success will be measured in this area by three metrics, 1) applications from middle-income students, 2) participation of financial aid recipients in study abroad, internships, volunteer work, student activities, etc., and 3) post graduate choices and starting salaries. Seven percent or 219 more middle-income students applied to the University in 2005-06 than in 2004-05 and qualified for AccessUVa benefits.

- The Academic Division will provide comprehensive counseling to prospective and current students and their families, assisting them in the financial aid application process and presenting them with financing options outside of need-based financial aid. This last component of the program has three main goals:

1. Improve the perception of the University as affordable.

2. Increase the socio-economic diversity of the University.

3. Improve student understanding of financial planning and debt management.

The University’s financial aid educational programs are currently being designed. We expect to measure trends in the following ways in order to gage success: 1) usage figures of educational programs provided on financial planning and debt management, 2) percent of financial aid applicants participating in financial management programs, and 3) evaluation of effectiveness of the educational programs.
The Commonwealth and the University agree that this commitment meets the requirements of subsection B of § 23-38.104 of the Act.

SECTION 2.3. Authority Granted to The University of Virginia’s College at Wise. The College shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits C through H are implemented by the University on behalf of the College, but the College shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.

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

SECTION 2.4.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits C through H, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.
SECTION 2.4.2. The University’s Enabling Legislation. As provided in subsection C of § 23-38.91 of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University’s Enabling Legislation, the Enabling Legislation shall control, except as provided in subsection A.1.b of § 23-38.112 of the Act regarding § 23-77.1.

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

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

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

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

SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as 
specified above, any other powers and authorities granted to the University pursuant to any other 
sections of the Code of Virginia, including other provisions of the Act, are not affected by this 
Management Agreement or the Board policies attached hereto as Exhibits C through H.
ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.

SECTION 3.1. Amendments. Any substantial and material change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits C through H shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § 23-38.88 and may lead to the Governor declaring this Management Agreement to be void pursuant to subsection D 4 of § 23-38.88 of the Act.

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

SECTION 3.2.1. Governor. Pursuant to subsection D 4 of § 23-38.88, and § 23-38.98, of the Act, if the Governor makes a written determination that the University is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the University and to the members of the General Assembly, and (ii) the University shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the University, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, the
University shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.

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

**ARTICLE 4. GENERAL PROVISIONS.**

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

**SECTION 4.2. Sovereign Immunity.** Pursuant to subsection E of § 23-38.88 of the Act, the University and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the University were not governed by the Act; provided that the Virginia Tort Claims Act, § 8.01-195.1 et seq. of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to the University.
SECTION 4.3. Term of Agreement; Authority to Renew. This Management Agreement shall remain in effect for a period of three years from its effective date. Pursuant to subsection D 3 of § 23-38.88 of the Act, the Commonwealth and the University may by mutual agreement renew this Agreement for successive five-year periods, or may enter into a new management agreement. If after its initial three-year term, or a successive five-year term if it is renewed by the parties, this Management Agreement is not renewed or a new agreement executed prior to the expiration of the three-year or five-year term, as applicable, this Management Agreement shall remain in effect on a provisional basis for a period of one year. If, after the expiration of the provisional one-year period, this Management Agreement has not been renewed or a new agreement executed, the University shall no longer be granted any of the financial or operational authority set forth in Subchapter 3 of the Act, unless and until such time as a new management agreement is entered into between the University and the Commonwealth.

WHEREFORE, the foregoing Management Agreement has been executed by the undersigned as of this 15th day of November, 2005, and shall become effective on the effective date of the Appropriation Act or amendments to an Appropriation Act enacted by the General Assembly containing a recommendation for its approval.

[END OF PAGE]
As Secretary to the Rector and Visitors of the University of Virginia, I, Alexander G. Gilliam, Jr., certify that the Board of Visitors, meeting in public session on June 10, 2003, by unanimous vote adopted the appended resolution. All sixteen Members of the Board were present and all voted.

Alexander G. Gilliam, Jr.
Secretary to the Rector and Visitors

October 27, 2003

Attachment
## RESOLUTIONS ADOPTED BY THE BOARD OF VISITORS

**JUNE 10-11, 2005**

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<td>Approval to Remove the Building at 400 Venable Lane in Charlottesville</td>
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<td>Approval to Establish a New MBA Program Format: Darden MBA for Executives, Darden Graduate School of Business Administration</td>
<td>6908</td>
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POLICY DISCUSSION

The Board resumed its meeting, in Open Session, at 1:25 p.m.; all Members present at the meeting before lunch were present.

The purpose of the meeting was the Board's customary policy discussion, the topic of which was the Restructured Higher Education Financial and Administrative Operations Act, the so-called "Charter Bill," which was passed by the General Assembly in its final - and as amended by the Governor - form on April 6th. The Board was called upon to approve the University's commitment to meet the goals specified in the Act, as well as to authorize the University administration to negotiate with the Governor to develop a management agreement with the Commonwealth.
After discussion, the Board approved the following resolutions:

APPROVAL OF THE COMMITMENT TO MEET THE STATE GOALS INCLUDED IN THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT

WHEREAS, the 2005 General Assembly passed HB 2866 and SB 1327 known as the Restructured Higher Education Financial and Administrative Operations Act, as amended by the Governor; and

WHEREAS, eligibility for participation in the Act specifies the formal adoption of a resolution by the Board of Visitors of the public institution of higher education by August 1, 2005, committing to the Governor and to the General Assembly to meet a set of eleven statewide goals as specified in Chapter 4.10, Section 23-38.88 B. of the Act as follows:

1. Consistent with its institutional mission, provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision 4 of §23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the State Council of Higher Education for Virginia. Each such institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with §23-9.2:3.02, ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment, determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition and fees;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission and assess regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions;
4. Ensure that the institution's academic programs and course offerings maintain high academic standards, by undertaking a continuous review and improvement of academic programs, course availability, faculty productivity, and other relevant factors;

5. Improve student retention such that students progress from initial enrollment to a timely graduation, and that the number of degrees conferred increases as enrollment increases;

6. Consistent with its institutional mission, develop articulation agreements that have uniform application to all Virginia community colleges and meet appropriate general education and program requirements at the four-year institution, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located, and for those institutions subject to a management agreement set forth in Subchapter 3 (§23-38.91 et seq.) of this chapter, in areas that lag the Commonwealth in terms of income, employment, and other factors;

8. Consistent with its institutional mission, increase the level of externally funded research conducted at the institution and facilitate the transfer of technology from university research centers to private sector companies;

9. Work actively and cooperatively with elementary and secondary school administrators, teachers, and students in public schools and school divisions to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

10. Prepare a six-year financial plan consistent with §23-9.2:3.02; and

11. Conduct the institution's business affairs in a manner that maximizes operational efficiencies and economies for the institution, contributes to maximum efficiencies and economies of state government as a whole,
and meets the financial and administrative management standards as specified by the Governor pursuant to §2.2-5004 and included in the appropriation act that is in effect, which shall include best practices for electronic procurement and leveraged purchasing, information technology, real estate portfolio management, and diversity of suppliers through fair and reasonable consideration of small, women, and minority-owned business enterprises.

WHEREAS, upon adoption of this resolution the University of Virginia, the University of Virginia Medical Center, and the University of Virginia's College at Wise shall be permitted on or after July 1, 2005 to exercise certain financial and administrative operational authority as specified in Chapter 4.10, §23-38.88 A.; and

WHEREAS, after meeting certain performance benchmarks associated with each of the eleven goals as assessed and certified by the State Council of Higher Education for Virginia, the University, the Medical Center, and the College at Wise will be eligible for certain financial incentives such as interest on tuition and fee revenue as outlined in §2.2-5005 of the Act;

RESOLVED that the Board of Visitors of the University of Virginia commits to the Governor and to the General Assembly that it will meet the goals as set forth in this resolution in addition to such other responsibilities as prescribed by law as they pertain to the University of Virginia, the Medical Center, and the College at Wise; and

RESOLVED FURTHER that the Board of Visitors requests the President to transmit this resolution to the Governor and the Secretary of Education.

APPROVAL OF THE BOARD OF VISITORS TO NEGOTIATE WITH THE GOVERNOR TO DEVELOP A MANAGEMENT AGREEMENT WITH THE COMMONWEALTH

WHEREAS, the 2005 General Assembly passed HB 2866 and SB 1327 known as the Restructured Higher Education Financial and Administrative Operations Act, as amended by the Governor; and
WHEREAS, separate action by the Board of Visitors commits to the Governor and the General Assembly to meet the state goals as specified in Chapter 4.10, Section 23-38.88 B. of the Act; and

WHEREAS, the Act includes a provision titled Subchapter 3, Alternative Authority for Covered Institutions (§23-38.91 et seq.), which sets out the requirements for a public university or college of the Commonwealth to gain the greatest degree of authority over financial and administrative operations, subject to certain accountability, audit and reporting measures specified by the General Assembly of Virginia;

RESOLVED, it is the sense of the Board of Visitors that the University is qualified to be, and should be, governed by the authorizations and requirements set forth in Subchapter 3 and as may otherwise be prescribed by applicable law; and

RESOLVED FURTHER that the Board of Visitors of the University attests to the ability of the institution to manage successfully its administrative and financial operations without jeopardizing its financial integrity and stability; and accordingly authorizes the University President to submit to the Governor a written request for the University to be governed by Subchapter 3, providing a copy of such written request to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health. The University's request shall be supported by the documentation called for by §23-38.97 of the Virginia Code, including documenting the University's expertise and resources to perform successfully its public educational mission and setting forth its performance and accountability standards; and

RESOLVED FURTHER that the President and the Executive Vice President and Chief Operating Officer are authorized to enter into negotiations with the Governor to develop a management agreement with the Commonwealth as provided for in the Act that will grant the greatest degree of financial and managerial autonomy to the University as provided in Subchapter 3, which management agreement shall be submitted to the Board of Visitors for its review and approval; and
RESOLVED FURTHER that it is the desire of the Board of Visitors that the Medical Center and the College at Wise be included in and benefit from the same financial and managerial authority as may be granted to the University according to the terms of the approved management agreement and the Act.
REQUEST FOR APPROVAL
OF THE GOVERNOR OF VIRGINIA
TO BE GOVERNED BY
SUBCHAPTER 3 OF THE
RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

NOTE: This request must be submitted to the Governor by November 15 of any given year.

If this request is approved, the Governor will designate a Cabinet Secretary or Secretaries to negotiate and enter into a management agreement between the public institution of higher education and the Commonwealth of Virginia. Any such management agreement, executed by the designated Cabinet Secretary or Secretaries and the governing body of the institution, must be submitted by no later than November 15 of any given year to the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health. The Governor must include a recommendation for approval of the management agreement either in The Budget Bill or in the Governor’s proposed amendments to the appropriation act submitted by December 20 of that year pursuant to § 2.2-1509 of the Code of Virginia. Following the General Assembly’s consideration of whether to approve or disapprove the management agreement as recommended, if the management agreement is approved as part of the general appropriation act, it shall become effective on the effective date of that general appropriation act.

Institution: University of Virginia

Person Submitting Request:

Name: John T. Casteen, III

Position: President

Date of Request: October 27, 2005

Pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005 (the “Act”), Chapter 4.10 (§ 23.38-88 et seq.) of Title 23 of the Code of Virginia, the above-name public institution of higher education of the Commonwealth of Virginia hereby respectfully requests the Governor of Virginia for approval to be governed by Subchapter 3 (§ 23-38.91 et seq.) of the Act. Pursuant to subsection D of § 23-38.88 and subsection A of § 23-38.97 of the Act, both of which govern the prerequisites to and execution of a management agreement between the above-named institution and the Commonwealth, the institution provides the Governor with the following information and documentation supporting this request. A copy
of this request has been sent to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health.

PART I: ELIGIBILITY CRITERIA

A. Board of Visitors’ Resolution

Subdivision D 2 b of § 23-38.88 and subdivision A 1 of § 23-38.97 of the Act require that “[a]n absolute two-thirds, or more, of the institution’s governing body shall have voted in the affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and should be, governed by” Subchapter 3 of the Act.

Date of governing body’s resolution: June 10, 2005

Number and percentage of governing body voting in the affirmative:
Fifteen of the sixteen voting Members were present and voted affirmative; 100%. (The Student Member - the 17th Member - does not vote).

Attach a copy of the resolution of the governing body of the institution.
See Attachment A for a copy of the resolution.

B. Bond Rating, or Decentralization and Additional Operational Authority Experience

In accordance with subdivision D 2 a of § 23-38.88, a public institution of higher education must meet one of the following criteria in order to be eligible to enter into a management agreement with the Commonwealth under Subchapter 3 of the Act.

CHECK ONE (“Bond Rating” or “Decentralization and Additional Operational Authority Experience”) as the basis for the institution’s Application:

(X) Bond Rating
An unenhanced bond rating of at least AA- (i.e., AA minus) or its equivalent within the last three years from the date a management agreement between the institution and the Commonwealth is entered into, from at least one of the following agencies (check all that apply):

<table>
<thead>
<tr>
<th>Bond Rating Agency</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moody’s Investors Services Inc.</td>
<td>Aaa</td>
</tr>
<tr>
<td>Standard &amp; Poor’s Inc.</td>
<td>AAA</td>
</tr>
<tr>
<td>Fitch Investors’ Services</td>
<td>AAA</td>
</tr>
</tbody>
</table>

Attach a copy of the letter or official electronic communication from each applicable rating agency notifying the institution of its bond rating.
See Attachment B for copies.
OR

Decentralization and Additional Operational Authority Experience

The institution must have:

1. Participated in decentralization pilot programs in finance and capital outlay.

   FINANCE
   Authority: ______________________________
   Date Granted: ____________________________

   CAPITAL OUTLAY
   Authority: ______________________________
   Date Granted: ____________________________

2. Demonstrated management competency in these two areas as evidenced by written certification from the Cabinet Secretary or Secretaries designated by the Governor. Attach a copy of the written certification from each designated Cabinet Secretary.

   (Pursuant to subdivision D 2 a of § 23-38.88 of the Act, the Governor must include in the Budget Bill he submits in December 2005 criteria for determining whether or not an institution has demonstrated this management competency.)

3. Received additional operational authority under a memorandum of understanding pursuant to § 23-38.90 of the Act in a least one functional area.

   Authority: ______________________________
   Date Granted: ____________________________

4. Demonstrated management competency in that area for a period of at least two years. Attach evidence of that management competency by certification from the appropriate Cabinet Secretary or Secretaries or otherwise.
PART II. INSTITUTIONAL CAPACITY

A. Administrative Infrastructure, Experience, and Expertise

Describe and document separately the institution’s administrative infrastructure, experience, and expertise to perform successfully its public educational mission as an institution governed by Subchapter 3 of the Act.

The University of Virginia has been recognized as one of the top ranked public universities in the nation. The institution has achieved this stature, in part, because of well-developed structures and functions managed by experienced, competent professionals. The infrastructure is sophisticated but yet flexible so that the University can be responsive to a changing environment. The University has proven repeatedly to be a good steward of its resources in pursuit of academic excellence.

Decentralization Participation
The University of Virginia’s participation in the State’s Higher Education decentralization program since 1994 has afforded the University opportunities to demonstrate its proficiency in promoting efficient and effective operations and its ability to collaborate with state agencies. In order to be eligible to participate, the University had to demonstrate it could manage the activity in terms of processes and resources and that reporting requirements were established. The University has successfully participated in decentralization in purchasing, human resources, financial transactions, capital outlay, and leases. These efforts have resulted in documented increased business efficiency and cost savings. The University has developed defined metrics to measure the effectiveness of decentralization initiatives in capital outlay and lease approvals and has consistently recorded these results in an annual report, including both results for the year and cumulative results since the inception of each initiative. This decentralization progress report has been submitted to the State each year. In the past, the Secretary of Finance completed an annual report on the status of decentralization. In general, the State reports have been positive and highlight the effective collaboration of higher education institutions and noticeable progress with decentralization projects. Over the years, the University has contributed to the further advancement of the State’s program through the submission of well-conceived proposals for additional autonomy to streamline and simplify processes while ensuring appropriate accountability.

Additionally, the University has further demonstrated administrative capability in its effective management of the U.Va. Medical Center, which was granted codified autonomy in 1996, affording it with greater flexibility to respond to health care market demands. As a result of this legislated autonomy, improvements in hospital purchasing and contracting, human resources management, including benefits and compensation for employees, and capital project review and construction have occurred. Today, the Medical Center is recognized as a leading academic research health system with high demand for inpatient occupancy and outpatient activity.
Financial Leadership and Oversight
The University’s senior leadership is comprised of highly qualified and experienced financial administrators. The combined years of experience in higher education financial affairs among the Executive Vice President and Chief Operating Officer, the Vice President for Management and Budget, and the Vice President and Chief Financial Officer number more than 77 years of experience, with 66 years at the University of Virginia. The Vice President and Chief Financial Officer also held financial positions in government agencies and the private sector prior to her higher education financial posts. In addition to the senior leadership, the University financial units are staffed with highly competent financial advisors and analysts.

Facilities Management
The University is committed to hiring competent professionals to manage the institution’s capital resources and fully supports the ongoing training and education of personnel to ensure the appropriate care of these assets. The University’s Facilities Planning and Construction division has a professional staff comprised of 32 project/construction managers who hold credentials as registered architect by the American Institute of Architects or as Professional Engineer (PE). The University Review Unit staff of 5 possess more than 156 years of total professional experience, with some 58 years of code review experience at the University. This unit’s review responsibilities span fire safety and protection, architectural, ADA accessibility, contract administration requirements, electrical, plumbing, heating, ventilation and air conditioning, telephone/data, and energy management. Many staff are in the process of completing Module training in order to pursue additional certifications. Currently, certifications being pursued include Building Code Official, mechanical plans reviewer, plumbing plans reviewer, mechanical and plumbing inspector, electrical plans reviewer, electrical inspector, structural plans reviewer, and structural inspector. All current staff qualify for provisional certification in code enforcement contingent upon successful completion of full certification within 12 months. The University received delegated authority to act as an Assistant State Building Official in 1991.

Commitment to Continuous Improvement
For over a decade the University has implemented a formal business improvement initiative, Process Simplification. This University-wide effort promotes process improvement through business redesign and change management. Significant accomplishments in administrative and student service areas have been achieved. Examples include the implementation of direct deposit, streamlining travel reimbursements, improving classified staff hiring, simplifying transcript issuance, and enhancing prospective undergraduate communications. Process Simplification supports the mission of the University of Virginia by creating and maintaining processes that offer unprecedented levels of service; enhance the quality of work life of faculty, staff, and students; empower employees to perform meaningful, productive work; and use technology and financial resources to their fullest advantage. Currently, Process Simplification is implementing a comprehensive plan for process improvement training and educational opportunities for employees and staff.
B. Financial Capabilities

Describe and document separately the institution’s financial capabilities to operate as an institution governed by Subchapter 3 of the Act without jeopardizing the financial integrity and stability of the institution.

The University’s consistently sound financial performance is a testament to its capability to prudently manage the institution’s financial resources in order to provide for a secure financial future. In Standard and Poor’s rating review, the University’s overall financial operations are said to be one of substantial revenue diversity, historically good operating performance, and a strong equity position. This good condition has been achieved by implementing Board-approved budgets, achieving unqualified audit opinions, maintaining AAA bond ratings and sustaining appropriate operating results in the Medical Center. Processes are in place to ensure that the University maintains the necessary operating and capital reserves.

The University has a debt policy that establishes guidelines on credit management and debt parameters, with the objective of incurring the lowest achievable long-term risk-adjusted cost of capital. The University also monitors actual performance against industry benchmarks and provides periodic updates on UVa’s debt capacity and financial status to both internal and external parties, including the Board of Visitors. The University’s performance has earned a AAA rating.

The objective of the operating budget is to accomplish current University goals while ensuring that physical and financial resources are appropriately preserved for the longer term. It is the responsibility of the University administration to propose annual plans which keep expenditures and revenues in balance. The Budget Office engages in regular monitoring and analysis of institutional budgets and serves as a resource to operating units in developing solutions to their budgeting issues. This office also develops strategies to optimize institutional revenue sources, including tuition, state general funds, and centrally managed private funds. The operating budget for the period July 1, 2005 through June 30, 2006 for the University will total $1.88 billion. The University is committed to long-term financial strategies to provide resources for basic operations and strategic initiatives, such as financial aid, diversity, compensation, and deferred maintenance through: effective and efficient operations, multi-year planning, increased unrestricted funding and endowment support, tuition policies, and fees for service. Historically, the institution has relied upon endowment funds to supplement educational and general programs and student financial aid.
PART III: PERFORMANCE AND ACCOUNTABILITY

A. **Compliance with the Commonwealth’s Management Standards**

As provided in subsection A of § 2.2-5004, the institution must consistently meet the Commonwealth’s financial and administrative management standards, including:

- An unqualified opinion from the Auditor of Public Accounts upon the audit of the public institution’s financial statements;
- No significant audit deficiencies attested to by the Auditor of Public Accounts;
- Substantial compliance with all financial reporting standards approved by the State Comptroller;
- Substantial attainment of accounts receivable standards approved by the State Comptroller, including, but not limited to, any standards for outstanding receivables and bad debts;
- Substantial attainment of accounts payable standards approved by the State Comptroller, including, but not limited to, any standards for accounts payable past due; and
- Such other financial and administrative management standards as the Governor may establish, or as may be included in the appropriation act currently in effect.

Attach a copy of the letters from the Secretaries of Finance and Education for the past three fiscal years stating that the institution has met the above Management Standards.

*See Attachment C for copies of the letters for fiscal years 2005, 2004, 2003. Please note that the only letter on file for the year 2003-2004 is unsigned; however, the University’s achievement of the management standards is documented with the State Department of Accounts.*

Attach a copy of the most recent Report from the Independent Auditor. (Effective July 1, 2007, when the Auditor of Public Accounts will report on the institution’s performance on the finance and administrative management standards.)

B. **(Effective July 1, 2007) Performance Against Institutional Benchmarks for Objective Measures of Educational-Related Performance**

Pursuant to subdivision A 1 of § 23-9.6:1.01, the State Council of Higher Education for Virginia (“SCHEV”) shall develop and revise from time to time objective measures of educational-related performance and institutional performance benchmarks for such objective measures for, at a minimum, the goals and objectives set forth in subdivisions B 1 through B 10 of § 23-38.88 of the Act. SCHEV shall develop the initial objective benchmarks for consideration by the Governor and the General Assembly by October 1, 2005. The Governor shall include initial recommended measures and institutional benchmarks, and any later revised measures and benchmarks, either in The Budget Bill or in his proposed gubernatorial amendments to the general appropriation act pursuant to subsection A or subsection E of § 2.2-1509, respectively. Beginning in 2006-2007, SCHEV shall annually assess the degree to which each individual public institution of higher
education has met the educational-related performance benchmarks set out in the appropriation act then in effect. The Secretaries of Finance and Administration shall provide assistance to the State Council in assessing whether or not public institutions have met the financial and administrative management performance benchmarks.

Attach a copy of SCHEV’s annual assessment for the institution for the last three fiscal years (prior to SCHEV’s completion of the assessment for 2008-2009, fewer than three annual assessments will be available for the institution).

The first assessment SCHEV will make of the University is in June 2007.


Pursuant to subdivision A 2 of § 23-9.6:1.01, the Governor shall develop and revise from time to time objective measures of financial and administrative management performance and related institutional benchmarks for the goals and objectives set forth in subdivision B 11 of § 23-38.88 of the Act. The Governor shall report his recommended initial measures and performance benchmarks to the General Assembly by November 15, 2005, and shall include his initial recommended measures and institutional benchmarks, and any later revised measures and benchmarks, either in The Budget Bill or in his proposed gubernatorial amendments to the general appropriation act pursuant to subsection A or subsection E of § 2.2-1509, respectively. Beginning in 2006-2007, SCHEV shall annually assess the degree to which each individual public institution of higher education has met the financial and administrative management performance benchmarks set out in the appropriation act then in effect. The Secretaries of Finance and Administration shall provide assistance to the State Council in assessing whether or not public institutions have met the financial and administrative management performance benchmarks.

Attach a copy of SCHEV’s annual assessment for the institution for the last three fiscal years (prior to SCHEV’s completion of the assessment for 2008-2009, fewer than three annual assessments will be available for the institution).

As of the filing of this application, the Governor had not established benchmarks for financial and administrative performance, other than the current management standards.

D. Additional Performance Measures Approved by the Institution’s Governing Body

Subdivision A 2 of § 23-38.97 of the Act provides that the institution “shall provide documentation substantiating that . . . the institution’s governing body has adopted performance and accountability standards, in addition to any institutional performance benchmarks included in the general appropriation act and developed pursuant to § 23-9.6:1.01, against which its implementation of this additional authority [under Subchapter 3 of the Act] can be measured.”
Attach a copy of the additional performance and accountability standards adopted by the institution’s governing body.

*Additional performance and accountability standards have been drafted and shared with the Secretary of Finance. See Attachment D for a listing of the proposed measures for each functional area in the management agreement.*
# RESOLUTIONS ADOPTED BY THE BOARD OF VISITORS

## JUNE 10-11, 2005

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POLICY DISCUSSION

The Board resumed its meeting, in Open Session, at 1:25 p.m.; all Members present at the meeting before lunch were present.

The purpose of the meeting was the Board's customary policy discussion, the topic of which was the Restructured Higher Education Financial and Administrative Operations Act, the so-called "Charter Bill," which was passed by the General Assembly in its final - and as amended by the Governor - form on April 6th. The Board was called upon to approve the University's commitment to meet the goals specified in the Act, as well as to authorize the University administration to negotiate with the Governor to develop a management agreement with the Commonwealth.
After discussion, the Board approved the following resolutions:

APPROVAL OF THE COMMITMENT TO MEET THE STATE GOALS INCLUDED IN THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT

WHEREAS, the 2005 General Assembly passed HB 2866 and SB 1327 known as the Restructured Higher Education Financial and Administrative Operations Act, as amended by the Governor; and

WHEREAS, eligibility for participation in the Act specifies the formal adoption of a resolution by the Board of Visitors of the public institution of higher education by August 1, 2005, committing to the Governor and to the General Assembly to meet a set of eleven statewide goals as specified in Chapter 4.10, Section 23-38.88 B. of the Act as follows:

1. Consistent with its institutional mission, provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision 4 of §23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the State Council of Higher Education for Virginia. Each such institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with §23-9.2:3.02, ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment, determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition and fees;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission and assess regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions;
4. Ensure that the institution's academic programs and course offerings maintain high academic standards, by undertaking a continuous review and improvement of academic programs, course availability, faculty productivity, and other relevant factors;

5. Improve student retention such that students progress from initial enrollment to a timely graduation, and that the number of degrees conferred increases as enrollment increases;

6. Consistent with its institutional mission, develop articulation agreements that have uniform application to all Virginia community colleges and meet appropriate general education and program requirements at the four-year institution, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located, and for those institutions subject to a management agreement set forth in Subchapter 3 (§23-38.91 et seq.) of this chapter, in areas that lag the Commonwealth in terms of income, employment, and other factors;

8. Consistent with its institutional mission, increase the level of externally funded research conducted at the institution and facilitate the transfer of technology from university research centers to private sector companies;

9. Work actively and cooperatively with elementary and secondary school administrators, teachers, and students in public schools and school divisions to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

10. Prepare a six-year financial plan consistent with §23-9.2:3.02; and

11. Conduct the institution's business affairs in a manner that maximizes operational efficiencies and economies for the institution, contributes to maximum efficiencies and economies of state government as a whole,
and meets the financial and administrative management standards as specified by the Governor pursuant to §2.2-5004 and included in the appropriation act that is in effect, which shall include best practices for electronic procurement and leveraged purchasing, information technology, real estate portfolio management, and diversity of suppliers through fair and reasonable consideration of small, women, and minority-owned business enterprises.

WHEREAS, upon adoption of this resolution the University of Virginia, the University of Virginia Medical Center, and the University of Virginia's College at Wise shall be permitted on or after July 1, 2005 to exercise certain financial and administrative operational authority as specified in Chapter 4.10, §23-38.88 A.; and

WHEREAS, after meeting certain performance benchmarks associated with each of the eleven goals as assessed and certified by the State Council of Higher Education for Virginia, the University, the Medical Center, and the College at Wise will be eligible for certain financial incentives such as interest on tuition and fee revenue as outlined in §2.2-5005 of the Act;

RESOLVED that the Board of Visitors of the University of Virginia commits to the Governor and to the General Assembly that it will meet the goals as set forth in this resolution in addition to such other responsibilities as prescribed by law as they pertain to the University of Virginia, the Medical Center, and the College at Wise; and

RESOLVED FURTHER that the Board of Visitors requests the President to transmit this resolution to the Governor and the Secretary of Education.

APPROVAL OF THE BOARD OF VISITORS TO NEGOTIATE WITH THE GOVERNOR TO DEVELOP A MANAGEMENT AGREEMENT WITH THE COMMONWEALTH

WHEREAS, the 2005 General Assembly passed HB 2866 and SB 1327 known as the Restructured Higher Education Financial and Administrative Operations Act, as amended by the Governor; and
WHEREAS, separate action by the Board of Visitors commits to the Governor and the General Assembly to meet the state goals as specified in Chapter 4.10, Section 23-38.88 B. of the Act; and

WHEREAS, the Act includes a provision titled Subchapter 3, Alternative Authority for Covered Institutions (§23-38.91 et seq.), which sets out the requirements for a public university or college of the Commonwealth to gain the greatest degree of authority over financial and administrative operations, subject to certain accountability, audit and reporting measures specified by the General Assembly of Virginia;

RESOLVED, it is the sense of the Board of Visitors that the University is qualified to be, and should be, governed by the authorizations and requirements set forth in Subchapter 3 and as may otherwise be prescribed by applicable law; and

RESOLVED FURTHER that the Board of Visitors of the University attests to the ability of the institution to manage successfully its administrative and financial operations without jeopardizing its financial integrity and stability; and accordingly authorizes the University President to submit to the Governor a written request for the University to be governed by Subchapter 3, providing a copy of such written request to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health. The University's request shall be supported by the documentation called for by §23-38.97 of the Virginia Code, including documenting the University's expertise and resources to perform successfully its public educational mission and setting forth its performance and accountability standards; and

RESOLVED FURTHER that the President and the Executive Vice President and Chief Operating Officer are authorized to enter into negotiations with the Governor to develop a management agreement with the Commonwealth as provided for in the Act that will grant the greatest degree of financial and managerial autonomy to the University as provided in Subchapter 3, which management agreement shall be submitted to the Board of Visitors for its review and approval; and
RESOLVED FURTHER that it is the desire of the Board of Visitors that the Medical Center and the College at Wise be included in and benefit from the same financial and managerial authority as may be granted to the University according to the terms of the approved management agreement and the Act.
June 23, 2005

Ms. Yoke San Reynolds  
Vice President for Finance  
University of Virginia  
P.O. Box 400210  
Madison Hall  
Charlottesville, VA 22904-4210

Moody's Investors Service  
99 Church Street  
New York, New York 10007

Elizabeth C. Veasey  
Senior Associate  
Tel: 212.553.1027  
Fax: 212-964.5062  
E-mail: elizabeth-veasey@moodys.com

Dear Ms. Reynolds:

I wish to inform you that Moody's Investors Service has assigned a rating of Aaa with a stable outlook to the University of Virginia's General Revenue Pledge Bonds, Series 2005. We are also affirming the P - 1 rating on the University's Commercial Paper. General Revenue Pledge Notes, Series 2003A and 2003B (taxable).

In order for us to maintain the currency of our ratings, we request that you provide ongoing disclosure, including annual financial and statistical information.

Moody's will monitor this rating and reserves the right to revise or withdraw it at any time in the future.

This rating, as well as any revisions or withdrawals thereof, will be publicly disseminated by Moody's through normal print and electronic media and in response to verbal requests to Moody's ratings desk.

Should you have any questions regarding the above, please do not hesitate to contact me.

Sincerely,

Elizabeth Veasey

EV/dr

cc:  Mr. Christopher Cowen  
Managing Director  
Prager, Sealy 85 Co., LLC  
One Maritime Plaza, Suite 1000  
San Francisco, CA 94111
June 28, 2005

Ms. Yoke San Reynolds  
Vice President for Finance  
University of Virginia  
P.O. Box 400210 - Madison Hall  
Charlottesville, VA 22904-4210

Dear Ms. Reynolds:

Fitch Ratings has assigned one or more ratings and/or otherwise taken rating action(s), as detailed on the attached Notice of Rating Action.

Ratings assigned by Fitch are based on documents and information provided to us by issuers, obligors, and/or their experts and agents, and are subject to receipt of the final closing documents. Fitch does not audit or verify the truth or accuracy of such information.

It is important that Fitch be provided with all information that may be material to its ratings so that they continue to accurately reflect the status of the rated issues. Ratings may be changed, withdrawn, suspended or placed on Rating Watch due to changes in, additions to or the inadequacy of information.

Ratings are not recommendations to buy, sell or hold securities. Ratings do not comment on the adequacy of market price, the suitability of any security for a particular investor, or the tax-exempt nature or taxability of payments made in respect of any security.

The assignment of a rating by Fitch shall not constitute a consent by Fitch to use its name as an expert in connection with any registration statement or other filing under U.S., U.K., or any other relevant securities laws.

We are pleased to have had the opportunity to be of service to you. If we can be of further assistance, please feel free to contact us at any time.

Sincerely,

Cherian George  
Senior Director  
U.S. Public Finance

CG/jk  
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<th>Bond Description</th>
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<th>Rating</th>
<th>Outlook/Watch</th>
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<td>RO:Sta</td>
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<td>Affirmed</td>
<td>AAA</td>
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Kay: RO: Rating Outlook; RW: Rating Watch; Pos: Positive; Neg: Negative; Sta: Stable; Evo: Evolving
University of Virginia

Credit Profile

US$195.07 ml gen rev pkgs
se s 2005
def 07/26/2005
due 12/1/2027
Rated AAA
State Date 08-08-2005

AFFIRMED
US$2.010 ml Univ of Virginia
gen rev pkgs
se s 2003A
def 04/15/2003
due 02/1/2034
Rated AAAA

OUTLOOK: STABLE

Rationale

Standard & Poor's Ratings Services assigned its 'AAA' rating to the University of Virginia's (UVA) general revenue pledge bonds, series 2005. Standard & Poor's also affirmed its 'AAA-A+,' rating on UVA's outstanding general revenue pledge bonds, series 2003A, and its 'A-1+' rating on UVA's commercial paper general revenue pledge notes, series 2003AB.

The rating reflects:

- The university's impressive demand for undergraduate, graduate, and professional academic programs, as well as the university's national reputation for excellence in academics and research;
- An endowment of $3.1 billion as of March 31, 2006, which ranks among the highest of U.S. public higher education endowments and the highest on a per-student basis for public universities, as well as historically good investment performance;
- A strong record of fundraising, demonstrated by an ongoing $3 billion campaign, towards which the university has so far raised $6.42 billion;
- Reduced dependence on state support from the 'AAA' rated Commonwealth of Virginia for general operations and for capital projects, which, though its has recently been reduced significantly, still provides a good operating subsidy on a per-student basis;
- Historically good financial performance, demonstrated by the consistent generation of operating surpluses and improved financial performance at the medical center;
- Considerable revenue diversity; and
- A highly manageable debt burden of 3.7%.

Although the university has not historically been an active user of debt financing, it has increased its debt issuance in recent years. With this issuance, total debt will equal about $535 million (not including commercial paper), up from $337 million at the end of fiscal 2002. In addition, the university is increasing its commercial paper authorization to $175 million from $100 million. As a result of substantially decreased support from the Commonwealth of Virginia, the university has been exploring a new relationship with the state. In 2005, the general assembly passed legislation that redefines the relationship between public institutions and the state, which would reduce the downside risk of cuts in state appropriations while giving the universities additional financial and administrative autonomy. Under this legislation, universities will remain state agencies and still benefit from state operating and capital appropriations.

Bond proceeds of $196.07 million will be used to finance a variety of capital projects; refund all or a portion of the series 1998A general revenue pledge bonds; and refund all or a portion of the series 2003A and 2003B commercial paper general revenue pledge notes. Of this debt issuance, about $85 million represents refunding with the rest being new money.

Outlook

The stable outlook reflects Standard & Poor's expectation that demand and financial trends will be steady, and that additional debt will be commensurate with growth in the university's financial resources.
Demand
The University of Virginia is one of the most competitive public universities in the U.S. Many of its graduate and professional programs are ranked in the top 10 for academic excellence, and those programs can generally charge tuition and fees comparable to any of the nation’s leading private universities. Undergraduate admissions are highly competitive. For the 2004 fall semester, 37% of all applicants for freshman admissions were accepted, and a strong 53% chose to enroll. Following 3 years of growth, fall 2004 graduate applications dipped slightly by 5% from the prior year. The graduate program is also highly selective with only 25% of the applicants admitted for the most recent year. Enrollment has been fairly steady for the past five years but has edged up slightly, to a full-time equivalent (FTE) enrollment of 20,004 for fall 2004. Nearly all students enroll for full-time study at the university, and FTE enrollment is nearly identical to headcount. After several years of zero or flat tuition increases, the university has a substantial amount of pricing flexibility. Total mandatory tuition and fees for undergraduates for the 2004-2005 academic year were $6,800 and the total estimated cost of attending the university for the current academic year is $15,679 (including room and board). Virginia residents typically comprise two-thirds of the entering freshman class. Non-residents pay a considerably higher level of tuition and fees of $31,779 (including room and board), which is still lower than many private universities but more in line with the institutions with which the school competes. The university competes with many higher-priced private universities for students, and the price advantage provides a competitive edge. The university wins cross-accepted students from many other AAU rated private universities and AAU* rated public universities. The university’s freshman retention rate of 97% and six-year graduation rate of 92% are excellent. For the most recent class, 94% of the freshmen graduated in the top 20% of their high school class, and the mean SAT for entering freshmen was a strong 1330.

Financial Performance
The university’s financial operations are characterized by substantial revenue diversity, historically good operating performance, and a strong equity position. For fiscal 2004, the university generated a total increase in net assets of $272 million. Including state appropriations, investment income, and gifts as operating revenues and interest as an operating expense, the total increase in net assets from operations was $234 million. Of the total $1.8 billion of adjusted operating revenues for fiscal 2004, patient services was the largest component, at $587 million, or 37%; followed by grants and contracts, at $324 million, or 17.6%; student tuition and fees, at $234 million, or 13%; and state appropriations, at $125 million, or 7%.

The Medical Center
As a standalone enterprise, the medical center recorded $713 million of operating revenues in fiscal 2004 and $671 million of expenses, generating an operating margin of $42 million, or 6.2% (relative to operating expenses). As a result of enhanced focus and new strategic initiatives, operating margins have increased considerably from the 0.6% achieved in fiscal 2002. Management expects an operating margin well above 5% for the current fiscal year. The medical center received $65 million in fiscal 2004 from the commonwealth; of this amount, $34 million was payment for the medical center’s disproportionate share of care provided to indigent patients and the remaining $31 million was a payment to reimburse the medical center for indirect medical education. Relative to other academic medical centers, costs per adjusted discharge and the case mix index are relatively low.

Grants And Contracts
For the year ending June 30, 2004, the university recorded grant and contract revenue of $324 million, an 8% increase from the prior year. The Department of Health and Human Services is the university’s primary sponsor, and the medical school accounted for the majority of the awards.
State Support
From fiscals 1999 to 2003, in-state tuition and fees for undergraduates actually dropped to $4,585 per year from $4,866 as a result of a legislative mandate by the commonwealth. Over the past fifteen years, the commonwealth's share of the university's total revenues, including operating and non-operating revenues, decreased to 7% in fiscal 2004 from more than 26%.

Financial Resources And Debt
The University of Virginia's $3.1 billion endowment places it among the highest in the country for public educational institutions. Of the total, approximately $2.2 billion is university-held and $910 million is held by foundations that exist solely to support the university. On a per-student basis, the endowment of about $154,000 per full-time equivalent student (as of fall 2004) is the highest for any public research university.

Historical investment performance is impressive. For the 10 years ending June 30, 2004, the endowment returned, on average, 14.5% compared to the S&P 500 return of 11.8%. For the fiscal year ended June 30, 2004, however, investment performance was 12.7%, somewhat below its peers and the market.

The endowment has grown through a combination of investment performance and a strong fundraising track record. Excluding a one-time large gift in fiscal 2003, total cash support to the university increased 13% in fiscal 2004 to $170 million from $151 million the year before. The university has more than 163,000 alumni on record, and the giving rate of 21% has the potential to grow. The university's peer aspiration group, for development benchmarks, is a select group of all-private universities ranked among the top 25 national universities by U.S. News & World Report.

On July 1, 1998, the board delegated responsibility for investment oversight to a subcommittee of the board's finance committee and named the operating division the University of Virginia Investment Management Co. (UVIMCO). In July 2004, the division became a separate 501(c)3 Virginia non-stock corporation; a CEO and CIO were hired in December 2004.

For fiscal 2005, the endowment will provide $86 million in expendable funds, per the institution's spending policy. The university measures its endowment and performance relative to a peer group of the 30 largest endowments in the U.S. The UVIMCO board has adopted the following policy portfolio targets: 45% to a diversified mix of hedge funds; 15% to private equity; 10% to international equity; 10% to domestic public equity; 10% to fixed income; 5% to real assets; and 5% to emerging markets.

The board sets the spending rate for the endowment. In April 2005, the board approved a new spending policy that allows for a 3.6% annual increase in spending, as long as the total payout falls within a range of 3.5% to 5.5% of the market value of the endowment. If payout is outside the range, management will take a recommendation to the board.

Liquidity remains good but has declined relative to debt as the university continues to increase its leverage. Cash and investments totaled $3.1 billion at the close of fiscal 2004, or 193% of adjusted operating expenses and 561% of pro forma debt (not including any commercial paper), down from 640% of total debt the prior year. Unrestricted net assets of $1.06 billion at June 30, 2004, equal 65% of operating expenses and 130% of pro forma debt (not including any commercial paper), down from 215% of total debt in fiscal 2003. The university is increasing the authorized limit on its commercial paper to $175 million from $100 million. At June 30, 2004, approximately 24% of the university's debt was variable-rate debt (including $19.7 million of commercial paper as of fiscal 2004).
The university has sufficient liquidity to support its variable-rate debt and commercial paper. Primary sources of liquidity are a $100 million line of credit, government agency securities on deposit with the commonwealth, and Treasuries and agencies held at UVIMCO.

This report was reproduced from Standard & Poor's RatingsDirect, the premier source of real-time, Web-based credit ratings and research from an organization that has been a leader in objective credit analysis for more than 140 years. To preview this dynamic on-line product, visit our RatingsDirect Web site at www.standardandpoors.com/ratingsdirect.
Dr. John T. Casteen, III  
President  
University of Virginia  
Post Office Box 400224  
Charlottesville, Virginia 22904  

Dear President Casteen:

We are pleased to inform you that the University of Virginia Academic Division, the University of Virginia Medical Center and The University of Virginia’s College at Wise have met all of the Management Standards for the Institutions of Higher Education in Virginia for 2004-2005.

The Management Standards that the University of Virginia Academic Division, the University of Virginia Medical Center and University of Virginia’s College at Wise met for 2004-2005 were:

- an unqualified opinion from the Auditor of Public Accounts upon the audit of the annual financial statements;
- no significant audit deficiencies are attested to by the Auditor of Public Accounts;
- compliance with financial reporting standards endorsed by the State Comptroller;
- attainment of accounts receivable standards; and
- attainment of accounts payable standard.

Congratulations on meeting the Management Standards for 2004-2005.

Sincerely,

John M. Bennett  
Secretary of Finance

Belle S. Wheelan  
Secretary of Education

copy: The Honorable Mark R. Warner  
The Honorable John H. Chichester, Chairman, Senate Finance Committee  
The Honorable Vincent F. Callahan, Jr., Chairman, House Appropriations Committee  
Mr. Gordon F. Rainey, Jr., Rector, University of Virginia  
Dr. Daniel J. LaVista, Executive Director, State Council of Higher Education  
Mr. Walter J. Kucharski, Auditor of Public Accounts  
Mr. David A. Von Moll, Comptroller, Department of Accounts  
Mr. Richard D. Brown, Director, Department of Planning and Budget
May 14, 2004

Dr. John T. Casteen, III  
President  
University of Virginia  
Madison Hall  
University Avenue  
Post Office Box 9011  
Charlottesville, Virginia 22906  

Dear President Casteen:

We are pleased to inform you that the University of Virginia Academic Division, the University of Virginia Medical Center and The University of Virginia's College at Wise have met all of the Management Standards for the Institutions of Higher Education in Virginia for 2003-2004.

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Mr. Gordon F. Rainey, Jr., Rector, University of Virginia  
Ms. Nancy Cooley, Ph.D., Acting Executive Director, State Council of Higher Education  
Mr. Walter J. Kucharski, Auditor of Public Accounts  
Mr. David A. Von Moll, Comptroller, Department of Accounts  
Mr. Richard D. Brown, Director, Department of Planning and Budget
COMMONWEALTH of VIRGINIA
Office of the Governor
April 14, 2003

Mr John T Casteen, III
President
University of Virginia
Post Office Box 400224
Charlottesville, Virginia 22904-4224

Dear President Casteen:

We are pleased to inform you that the University of Virginia Academic Division, the University of Virginia Medical Center and The University of Virginia’s College at Wise have met all of the Management Standards for the Institutions of Higher Education in Virginia for 2002-2003.

The Management Standards that the University of Virginia Academic Division, the University of Virginia Medical Center and University of Virginia’s College at Wise met for 2002-2003 were:

• an unqualified opinion from the Auditor of Public Accounts upon the audit of the annual financial statements;
• no significant audit deficiencies are attested to by the Auditor of Public Accounts;
• compliance with financial reporting standards endorsed by the State Comptroller;
• attainment of accounts receivable standards; and
• attainment of accounts payable standard

Congratulations on meeting the Management Standards for 2002-2003.

Sincerely,

John M. Bennett
Secretary of Finance

Belle S. Wheelan
Secretary of Education

cc: The Honorable Mark R. Warner
    The Honorable John H Chichester, Chairman, Senate Finance Committee
    The Honorable Vincent F. Callahan, Jr., Chairman, House Appropriations Committee
    Mr Gorgon F. Rainey, Jr, Rector, University of Virginia
    Mr Steven H Kaplan, Chancellor, University of Virginia’s College at Wise
    Ms Phyllis Palmiero, Executive Director, State Council of Higher Education
    Mr Walter J. Kucharski, Auditor of Public Accounts
    Mr David A. Von Moll, Comptroller, Department of Accounts
    Mr Richard D. Brown, Director, Department of Planning and Budget

(804) 786-1148 • Fax (804) 692-0676 • TTY (804) 786-1765
CAPITAL OUTLAY, LEASES, AND REAL ESTATE

PERFORMANCE MEASURES

General Accountability Measures

- No material audit findings
- Compliance with Board of Visitors (“BOV”) approved restructuring policy
- Regular reports to the BOV by the designated building official related to his/her duties as the official responsible for project compliance with the building code. The building official has direct access to the BOV.
- Compliance with the Restructuring Act’s reporting requirements for all BOV project authorizations
- All Certificates of Use issued subsequent to the State Fire Marshal’s favorable occupancy report

Specific Performance Measures

<table>
<thead>
<tr>
<th>Performance Measure</th>
<th>Benchmark</th>
<th>[Institution] Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of days on average for institution to process change orders locally</td>
<td>Before decentralization, number of days on average for Bureau of Capital Outlay Management (“BCOM”) to process change orders (UVA data to be used as proxy benchmark for all institutions)</td>
<td></td>
</tr>
<tr>
<td>Number of days on average for institution to complete code review, including fire and life safety</td>
<td>BCOM established standard for code review turnaround time (21 days)</td>
<td></td>
</tr>
<tr>
<td>Number of days saved by BOV approval of NGF projects compared to state approval</td>
<td>Number of days that would have been required from BOV approval to Appropriation Act effective date</td>
<td></td>
</tr>
<tr>
<td>Average number of days for institution to approve a lease</td>
<td>Average number of days for Real Estate Services to approve a lease (UVA and VT proxy data)</td>
<td></td>
</tr>
</tbody>
</table>
FINANCE AND ACCOUNTING

PERFORMANCE MEASURES

General Accountability Measures

- Compliance with current and/or revised Commonwealth management standards, including unqualified audit opinion and no material audit findings
- Compliance with Board of Visitors approved restructuring policy
- Maintain an independent and effective internal audit function reporting directly to the Board of Visitors and have no significant internal audit findings

Specific Performance Measures

<table>
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<th>Performance Measure</th>
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<th>[Institution Results]</th>
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<tbody>
<tr>
<td>Stability of tuition and fee increases over time</td>
<td>Trend tuition and fee percentage increases from 1990-2005 compared to percentage increases over the timeframe of the six-year plan</td>
<td></td>
</tr>
<tr>
<td>Bond rating from at least one of three rating agencies</td>
<td>An unenhanced rating received in the last three years within the double –A range or better from either Moody’s, S&amp;P, or Fitch</td>
<td></td>
</tr>
<tr>
<td>Annualized investment returns earned on operating cash balances invested by the institution over a rolling three year period</td>
<td>The annualized yield on the 91-day Treasury Bill Index over a rolling three year period</td>
<td></td>
</tr>
<tr>
<td>Debt burden ratio (actual annual debt service on a long-term debt, excluding commercial paper or other bond anticipation notes, divided by total operating expenses)</td>
<td>Equal to or less than 7%</td>
<td></td>
</tr>
<tr>
<td>Write off of bad debts from tuition, fees, room, and board charges</td>
<td>Less than or equal to 1% of prior year’s operating revenues, over a rolling three year period</td>
<td></td>
</tr>
<tr>
<td>Percentage of recovery of delinquent accounts receivable sent to outside collection agencies or litigation</td>
<td>Greater than or equal to 10% of dollar value of the accounts referred to collection agencies, averaged over the last three years</td>
<td></td>
</tr>
<tr>
<td>Amount of need-based financial aid for undergraduate Virginia students</td>
<td>Trend data against a baseline calculation in 2005-06</td>
<td></td>
</tr>
<tr>
<td>Amount of need-based grants for undergraduate Virginia students</td>
<td>Trend data against a baseline calculation in 2005-06</td>
<td></td>
</tr>
</tbody>
</table>
HUMAN RESOURCES

PERFORMANCE MEASURES

General Accountability Measures

- No material audit findings
- Compliance with Board of Visitors approved restructuring policy
- Compliance with Restructuring Act reporting requirements

Specific Performance Measures

<table>
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<tr>
<th>Performance Measure</th>
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<th>[Institution] Results</th>
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<tr>
<td>Percentage of turnover as an indicator of staff stability and staff satisfaction</td>
<td>Average percentage turnover rate should trend with College and University Personnel Administrators (“CUPA”) - Human Resources (“HR”) benchmark, which is approximately 11%</td>
<td></td>
</tr>
<tr>
<td>Internal transfers/promotions as a percentage of total number of hires as a measure of the extent to which the institution hires or promotes from within</td>
<td>Percentage rate should be equal to or greater than CUPA-HR benchmark, which is 25%</td>
<td></td>
</tr>
<tr>
<td>Average number of days to classify new positions or reclassify a staff position as a measure of effectiveness of the classification process</td>
<td>Average should be equal to or less than CUPA-HR benchmark, which is approximately 30 days</td>
<td></td>
</tr>
<tr>
<td>Average number of days to hire staff, from recruitment posting to the candidate’s acceptance OR state date of the position as a measure of effectiveness</td>
<td>Trend data against baseline average in 2005-06.</td>
<td></td>
</tr>
<tr>
<td>Compliance with Restructuring Act election provisions</td>
<td>Track percent of (i) total employees who are participating in the institutional HR system and (ii) current employees who have elected to participate in the institutional HR system</td>
<td></td>
</tr>
</tbody>
</table>
INFORMATION TECHNOLOGY

PERFORMANCE MEASURES

General Accountability Measures

- Campus infrastructure supporting the expansion of cutting edge research and new forms of instruction consistent with peer research institutions
- Facilities and support for high performance computing and communications and large scale (i.e. peta-scale) data repositories consistent with peer research institutions
- Compliance of institution’s security programs with professional best practices
- Development and implementation of up-to-date institutional information technology strategic plan
- Compliance with Board of Visitors approved restructuring policy

Specific Performance Measures

<table>
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<tr>
<th>Performance Measure</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Major information technology projects will be completed on approved schedules and within approved budgets</td>
<td>Projects are completed on time and within budget at a rate that matches industry standards</td>
<td></td>
</tr>
<tr>
<td>All faculty and students have convenient access to a distributed learning and collaboration environment, with course management systems in support of such services as online content; student information and library systems upgraded as major changes in technology warrant</td>
<td>xx% (based on individual university metric) of all 2005-2006 courses utilize technically up-to-date course management systems</td>
<td></td>
</tr>
<tr>
<td>Institutions will leverage their collective expertise to save money and help strengthen security programs</td>
<td>There is evidence of collaboration among institutions, such as the Higher Education Virginia Alliance for Security Computing and Networking (VA SCAN)</td>
<td></td>
</tr>
<tr>
<td>The institution complies with policies for the procurement of information technology goods and services, including professional services, that are consistent with the requirements of § 23.38.110 of the Restructured Higher Education Financial and Administrative Operations Act and that include provisions addressing cooperative arrangements for such procurement as described in § 23.38.110</td>
<td>Results of external and internal audits indicate compliance</td>
<td></td>
</tr>
</tbody>
</table>
PROCUREMENT AND SURPLUS PERSONAL PROPERTY

PERFORMANCE MEASURES

General Accountability Measures

- Compliance with current and/or revised Commonwealth management standards, including prompt pay compliance and no material audit findings
- Compliance with Board of Visitors approved restructuring policy and procurement rules document

Specific Performance Measures

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</thead>
<tbody>
<tr>
<td>Goals established in the plan submitted to the State under current law for Small, Woman-owned and Minority-owned procurement. Performance will be reported quarterly</td>
<td>Accomplishment of goals and improvement on previous performance</td>
</tr>
<tr>
<td>Maximize operational efficiencies and economies through the adoption of best practices for electronic procurement</td>
<td>Increased use of electronic procurement as measured by dollar value</td>
</tr>
<tr>
<td>Volume of cooperative procurements</td>
<td>Measure increase in the number of existing contracts renewed and new contracts over the number of current contracts</td>
</tr>
<tr>
<td>Vendor protests with a legal basis for the protest</td>
<td>Number of such vendor protests as compared to 2005-2006</td>
</tr>
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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

THE RECTOR AND VISITORS
OF THE
UNIVERSITY OF VIRGINIA

POLICY GOVERNING CAPITAL PROJECTS

November 15, 2005
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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.


“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.


“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing $1 million or more, improvements or renovations of $1 million or more, and Capital Leases.
“Medical Center” means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.

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

“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

III. SCOPE OF POLICY.

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

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

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

V. CAPITAL PROGRAM.

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

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

VI. AUTHORIZATION OF CAPITAL PROJECTS

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

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

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

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

VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.

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

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

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

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

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

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

F. Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of 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. When serving as the University
Building Official, such individual shall 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:

A. Maintaining a review unit supported by resources and staff who are certified by the
   Department of Housing and Community Development in accordance with § 36-137
   of the Code of Virginia for such purpose and who shall review plans, specifications
   and documents for compliance with building codes and standards and perform
   required inspections of work in progress and the completed capital project. No
   individual licensed professional architect or engineer hired or contracted with to
   perform these functions shall also perform other building code-related design,
   construction, facilities-related project management or facilities management functions
   for the University on the same capital project; or

B. Using the services of the Department of General Services, Division of Engineering
   and Buildings, to perform the building code review duties as described above.

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 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.
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

THE RECTOR AND VISITORS
OF THE
UNIVERSITY OF VIRGINIA

POLICY GOVERNING
LEASES OF REAL PROPERTY

November 7, 2005
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THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
POLICY GOVERNING LEASES OF REAL PROPERTY

I. PREAMBLE.

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

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

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

“Academic Division” means that part of the University known as State Agency 207.


“Board of Visitors” 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.

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

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

“Income Lease” means an Operating Lease of real property under the control of the University to another entity.

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

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

“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

III. SCOPE OF POLICY.

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

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

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

V. REQUIREMENTS FOR LEASES.

A. Factors to Be Considered When Entering into Leases.

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

B. Competition to Be Sought to Maximum Practicable Degree.

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

C. Approval of Form of Lease Required.

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

D. Execution of Leases.

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

E. Capital Leases.

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

F. Compliance with Applicable Law.

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

G. Certification of Occupancy.

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

THE RECTOR AND VISITORS
OF THE
UNIVERSITY OF VIRGINIA

POLICY GOVERNING
INFORMATION TECHNOLOGY

November 7, 2005
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I. PREAMBLE.

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

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

II. DEFINITIONS.

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

“Academic Division” means that part of the University known as State Agency 207.


“Board of Visitors” or “Board” means the Rector and Board of Visitors of the University of Virginia.
“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as State Agency 246.

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

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

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

“Policy” means this Information Technology Policy adopted by the Board of Visitors.

“State Chief Information Officer” or “State CIO” means the Chief Information Officer of the Commonwealth of Virginia.

“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

II. SCOPE OF POLICY.

This Policy is intended to cover and implement the authority that may be granted to the University of Virginia pursuant to Subchapter 3 (§ 23-38.91 et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University’s enabling legislation as that term is defined in § 23-38.89 of the Act. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the
extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

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

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

IV. GENERAL PROVISIONS.

A. Board of Visitors Accountability and Delegation of Authority.

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

B. Strategic Planning.

The President, acting through the Executive Vice President and Chief Operating Officer, shall be responsible for overall IT strategic planning at the University, which shall be linked to and in support of the University’s overall strategic plan.

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

C. Expenditure Reporting and Budgeting .

The President, acting through the Executive Vice President and Chief Operating Officer, shall approve and be responsible for overall IT budgeting and investments at the University. The University’s IT budget and investments shall be linked to and in support of the University’s IT strategic plan, and shall be consistent with general University policies, the Board-approved annual operating budget, and other Board approvals for certain procurements.

By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year’s IT expenditures.

The University shall be specifically exempt from:

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

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

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

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

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

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

The President, acting through the Executive Vice President and Chief Operating Officer, shall be responsible for decisions to substantially alter a project’s scope, budget, or schedule after initial approval.
The University shall be specifically exempt from:

- § 2.2-2008 of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management) as it currently exists and from time to time may be amended;
- §§ 2.2-2016 through 2.2-2021 of Title 2.2 of the Code of Virginia (Division of Project Management) as they currently exist and from time to time may be amended; and
- any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.

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

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

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

The President, acting through the executive Vice President and Chief Operating Officer, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.
For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.

F. Audits.

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

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

THE RECTOR AND VISITORS
OF THE
UNIVERSITY OF VIRGINIA

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

November 15, 2005
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THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
POLICY GOVERNING THE PROCUREMENT OF
GOODS, SERVICES, INSURANCE AND CONSTRUCTION
AND THE DISPOSITION OF SURPLUS MATERIALS

I. PREAMBLE.

A. Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and
Senate Bill No. 389, respectively) provided the University of Virginia with autonomy to conduct
the procurement of goods and services, including professional services, and construction, on
behalf of the University of Virginia Medical Center. Pursuant thereto, in 1996 the Board of
Visitors adopted a Policy Statement Governing Exercise of Procurement Autonomy by the
University on behalf of the Medical Center. Subchapter 3 of the Restructured Higher Education
Financial and Administrative Operations Act (the “Act”), Chapter 4.10 (§ 23-38.88 et seq.) of
Title 23 of the Code of Virginia, provides that the University of Virginia, upon becoming a
Covered Institution, shall be authorized to establish its own system for the procurement of goods,
services, insurance, and construction, and for the independent disposition of surplus materials by
public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by
its Board of Visitors for the procurement of goods, services, insurance, and construction, and the
disposition of surplus materials. The provisions of this Policy set forth below, together with the
Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this
Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act
regarding procurement of goods, services, insurance, and construction, and the disposition of
surplus materials by the University.
C. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the University's Enabling Legislation are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

II. DEFINITIONS.

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

“Academic Division” means that part of the University known as state agency 207.


“Agreement” means “Management Agreement”.

“Board of Visitors” means the Rector and Visitors of the University of Virginia.

“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as state agency 246.

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

“Effective Date” means the effective date of the Management Agreement.
“**Enabling Legislation**” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, 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 Medical Center Policy Statement**” means the Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center adopted in 1996 by the Board of Visitors for the Medical Center.

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

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

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

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

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

“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

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

IV. GENERAL PROVISIONS.

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

The Academic Division and the College, through its administrative relationship with the University, have had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. Effective July 1, 1996, the University was
granted autonomy to establish a procurement system for the Medical Center, and the Board of Visitors approved the Existing Medical Center Policy Statement. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the University to develop a procurement system for the Academic Division and the College, as well as a surplus materials disposition system for the University as a whole, and to continue the existing procurement system and policies of the Medical Center. Any University electronic procurement system, other than the Medical Center’s electronic procurement system, shall integrate or interface with the Commonwealth’s electronic procurement system.

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

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

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

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

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

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

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

Consistent with this commitment, the University:

i) may purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the University shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth’s electronic procurement system;
ii) shall use directly or by integration or interface the Commonwealth’s electronic procurement system and comply with the business plan for the Commonwealth’s electronic procurement system, as modified by an agreement between the Commonwealth and the University attached to this Policy as Attachment 2; and

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

E. Implementation.

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

V. UNIVERSITY PROCUREMENT POLICIES.

A. General Competitive Principles.

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

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

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

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

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

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

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

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

C. Cooperative Procurements and Alliances.

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

D. Training; Ethics in Contracting.

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

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

E. Ethics and University Procurements.

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

VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.

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

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

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

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

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

VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

A. Protests, Appeals and Debarment.

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

B. Prompt Payment of Contractors and Subcontractors.

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

C. Types of Procurements.

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

D. Approval and Public Notice of Procurements

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

E. Administration of Contracts.

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

F. Non-Discrimination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Public opening and announcement of all bids received.

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

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

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

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

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

“Design-build contract” means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.
“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.

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

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

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

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

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

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

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

§ 5. Methods of procurement.—

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

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

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

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

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

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

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

E. Upon a determination in writing that there is only one source practically 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 purchases:

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

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

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

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

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

§ 8. Modification of the contract. –

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

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

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

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

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

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

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive 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. – The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

§ 14. Prequalification generally; prequalification for construction. –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Institution may waive informalities in bids.

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

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

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

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

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

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

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

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

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
§ 21. Preference for Virginia coal used in the Institution. – In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

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

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

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 five percent.

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

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

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

§ 24. Contract Pricing Arrangements. –

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

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

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

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

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

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

§ 26. Retainage on construction contracts. –

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

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

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

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

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

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

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

3. Provides for liquidated damages for delay; or

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

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

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

§ 28. Bid bonds. –

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

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

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

§ 29. Performance and payment bonds. –

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

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

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

"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 $1,000,000.

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 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

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

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

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

§ 35. Exemption for certain transactions. –

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

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

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

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

4. The University of Virginia Medical Center.

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

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

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

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.
B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

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

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

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

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 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.

§ 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) thirty days after receipt of a proper invoice by the Institution or its agent or (b) thirty 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 fifteen days after receipt of the invoice or the goods or services.

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

§ 45. **Payment clauses to be included in contracts.** – Any contract awarded by the Institution shall include:

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

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

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

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

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

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

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

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

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

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

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed
because of disagreement between the Institution and a vendor regarding the quantity, quality or
time of delivery of goods or services or the accuracy of any invoice received for the goods or
services. The exception from the interest penalty provided by this subsection shall apply only to
that portion of a 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 ten business days after receipt of the notice, the bidder may submit rebuttal information
challenging the evaluation. The Institution shall issue its written determination of
disqualification or ineligibility based on all information in the possession of the Institution,
including any rebuttal information, within five business days of the date the Institution received
such rebuttal information.
If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

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

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

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

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

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

§ 49. Determination of nonresponsibility. –

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

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.
2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 54. Legal actions. –

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

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

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

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

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

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

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

§ 55. Administrative appeals procedure. –

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

§ 56. **Alternative dispute resolution.** – The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and 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.
Memorandum of Agreement

The Commonwealth of Virginia and the University of Virginia

ERP/SciQuest Implementation with eVA
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:

Setup:

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

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

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

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

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

VI. eVA will deliver University non-exempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, eXML). 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 8PM and 4AM. eVA will transmit registered vendor orders it receives within fifteen minutes or less.

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

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

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

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

**Schedule**

The University shall implement this agreement no later than December 2006.
Metrics

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

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

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

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

2. Conduct business with eVA registered vendors whenever possible;

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

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

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

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

The University further agrees that:

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

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

c. In the event the University does not provide resolution notification to the eVA Business Manager (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.

6. Timely process electronic change orders and cancellations;

7. Post all solicitations and business opportunities greater than $50,000 on the eVA web site 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.
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

THE RECTOR AND VISITORS
OF THE
UNIVERSITY OF VIRGINIA

POLICY GOVERNING
HUMAN RESOURCES FOR
PARTICIPATING COVERED EMPLOYEES
AND OTHER UNIVERSITY EMPLOYEES

November 15, 2005
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I. PREAMBLE.

Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) grant the University of Virginia authority regarding the adoption of an alternative human resources system and alternative retirement, health care and other insurance plans for University of Virginia Medical Center employees. Further, the Restructured Higher Education Financial and Administrative Operations Act (the “Act”), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the University shall have responsibility and accountability for human resources management for all University employees, defined in the Act as “Covered Employees,” who pursuant to subsection A of § 23-38.114 of the Act “are state employees of” the University. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that
Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or University-sponsored benefit plans as described by the Management Agreement.

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

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

“Academic Division Human Resources System” means the human resources system for Academic Division employees as provided for herein.

“Board of Visitors” or “Board” means the Rector and Board of Visitors of the University of Virginia.

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

“College” means that part of the University operated as the University of Virginia’s College at Wise (State Agency 246).

“College Human Resources System” means the human resources system for College employees as provided for herein.

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

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

“Employee” means Covered Employee unless the context clearly indicates otherwise.

“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, 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.
“Existing Medical Center Policy Statement” means the Policy Statement Governing the Exercise of Medical Center Personnel Autonomy adopted by the Board of Visitors in 1996.

“Governing Law” means the Act and the University’s Enabling Legislation.

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

“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.

“Medical Center Human Resources System” means the human resources system for Medical Center employees as provided for herein.

“Participating Covered Employee” means (i) all salaried nonfaculty University employees who were employed as of the day prior to the Effective Date of the University’s initial Management Agreement with the Commonwealth, and who elect pursuant to § 23-38.115 of the Act to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by [the Participating Institution], (ii) all salaried nonfaculty University employees who are employed by the University on or after the Effective Date of the initial Management Agreement between the University and the Commonwealth, (iii) all non-salaried nonfaculty University employees without regard to when they were hired, (iv) all faculty University employees without regard to when they were hired, and (v) all employees of the University of Virginia Medical Center without regard to when they were hired.

“Systems” mean collectively the Academic Division Human Resources System, the College Human Resources System, and the Medical Center Human Resources System that are in effect from time to time.
“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

“University employee” means a Covered Employee.

III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

The University has had human resources system autonomy through decentralization and codified autonomy for its employees for some time. For example, general faculty at the University are expressly exempt from the Virginia Personnel Act. The Academic Division and the College have had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices; the administration of separate health insurance and retirement plans. Effective July 1, 1996, all Medical Center employees were exempted from the Virginia Personnel Act and the policies and procedures of the Virginia Department of Human Resource Management (formerly the Department of Personnel and Training). The Board of Visitors approved the Existing Medical Center Policy Statement in 1996. A separate human resources system is in place for all Medical Center employees, which the Board of Visitors hereby continues, recognizing that the human resources needs of the Medical Center differ in certain respects from those of the Academic Division and the College.

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

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the 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. UNIVERSITY OF VIRGINIA HUMAN RESOURCES SYSTEMS.

A. Adoption and Implementation of Academic Division and College Human Resources Systems for the Academic Division and the College; Continuation of Medical Center Human Resources System for the Medical Center.

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

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

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

1. the current human resources system for “Academic Division General Faculty” as posted on the Vice President and Provost’s web site, [http://www.virginia.edu/provost/index.html](http://www.virginia.edu/provost/index.html), and periodically amended;
2. the current human resources system for “College General Faculty” as included in the University of Virginia's College at Wise Faculty Handbook 2004-05, as periodically amended;

3. the current human resources system for Classified Employees in the Academic Division and the College as posted on the Virginia Department of Human Resource Management website at http://www.dhrm.state.va.us/hrpolicy/policy.html, and the University’s web site at http://www.hrs.virginia.edu/policies.html, as periodically amended;

4. the human resources system for Participating Covered Employees, which shall include non-salaried (wage) employees, as posted on the University Human Resources web site, www.hrs.virginia.edu, and periodically amended; and

5. the current human resources system for Medical Center employees, which shall continue, including the policies and procedures set forth in the University of Virginia Medical Center Human Resources Policies and Procedures Manual, as such Manual may be amended from time to time. The Medical Center Human Resources System is and shall continue to be consistent with Governing Law, other provisions of applicable law, and any other human resources policies adopted by the Board of Visitors for Medical Center employees. All current delegations of authority to University and Medical Center officials who oversee the Medical Center Human Resources System are hereby ratified and continue.

All the systems described above, except the system described in paragraph 3, may be amended by the President, acting through the Executive Vice President and Chief Operating Officer,
consistent with these human resources policies. The system described in paragraph 3 may be amended only by the State.

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

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

VI. HUMAN RESOURCES POLICIES.

The Academic Division and College Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above, as well as the Medical Center Human Resources System, shall embody the following human resources policies and principles:

A. Election by Academic Division and College Salaried Nonfaculty Employees.

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

Each such salaried nonfaculty University employee shall be given at least 90 days to make the election required by the prior paragraph. Such 90-day period shall begin to run on the date on which the Academic Division Human Resources System or the College Human Resources System, as appropriate, becomes effective for that University employee’s classification of employees. If such a salaried nonfaculty University employee does not make an election by the end of that specified election period, that University employee shall be deemed not to have elected to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate. If such a salaried nonfaculty University employee elects to participate in the Academic Division Human Resources System or the
College Human Resources System, as appropriate, that election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty University employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 22.1-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 an opportunity to elect to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate; provided that, each time prior to offering such opportunity to such salaried nonfaculty University employees, and at least once every two years after the effective date of the Academic Division Human Resources System or the College Human Resources System, or both, as appropriate, the University shall make available to each of its salaried nonfaculty University employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.

B. Classification and Compensation.

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

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

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

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

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

6. **Work Schedule and Workweek.** The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all University employees, including alternative work schedules and sites, and telecommuting policies and procedures.
7. Other Classification and Compensation Policies and Procedures. The Systems may include any other reasonable classification and compensation policies and procedures the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.

C. Benefits.

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

Notwithstanding the above, pursuant to subsection A of § 23-38.114 of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers’ compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible University employees. If, however, the
University has been or is permitted by law other than the Act to establish an alternative health insurance plan or an alternative faculty or Medical Center retirement plan or plans, such alternative health insurance or faculty or Medical Center retirement plan or plans shall apply to and govern the University employees included in such plan or plans. The University shall be responsible for managing its non-Medicare eligible retiree health insurance. Subject to the Act, the University may offer an alternative health insurance plan for Medicare-eligible retirees.

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

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

D. Employee Relations.

1. General. The Systems shall contain provisions that protect the rights and privileges of University employees consistent with sound management principles and fair employment practice law. At regular intervals, the University shall engage in consultations and discussions with, and receive input from, diverse employee groups regarding human resources issues, including the Academic Division Human Resources System and the College Human Resources System.

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

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

4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the University, have been employed by the University for specified periods of time, or have retired from the University after lengthy service.
5. **Counseling Services.** The Systems shall provide counseling services through the State’s Employee Assistance Program or a University Employee Assistance Program to any eligible University employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.

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

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

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

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

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

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

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

On or after the Effective Date of the University’s initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the University under the provisions of the State Layoff Policy shall be Participating Covered Employees.

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

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

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

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

E. **Leave and Release Time.**

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


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

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

In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation.
On or after the Effective Date of the University’s initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. University Academic Division and College Classified Employees who change jobs within the Academic Division or the College through a competitive employment process – i.e., promotion or transfer – shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.

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

G. *Information Systems.*

The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 1, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human Resources Management.
VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS’ POLICIES AFFECTING UNIVERSITY PERSONNEL.

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

In addition, all University employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to University personnel unless University employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.
Memorandum of Understanding
Between the University of Virginia and the
Department of Human Resources Management Regarding
The Reporting of Human Resources Management Data
Memorandum of Understanding
Between the University of Virginia and the
Department of Human Resources Management Regarding
The Reporting of Human Resources Management Data

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

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

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

   a. The University will provide a flat file of designated personnel data. For “Classified Employees”, the data provided will match DHRM’s data values for the designated fields. For salaried “Participating Covered Employees”, the data provided will include the University’s data values for the designated fields. The University will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

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

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

3. The University may key data into the Benefits Enrollment System or employees may use Employee Direct (employee self service). For the self-administered
health plans provided by the University of Virginia Academic Division (agency 207) and Medical Center (agency 209), this section is not relevant.

4. Other reports to be provided by the University include the following:
   a. Monthly Employee Position Report
   b. Annual report on salaried, wage, and contract employees

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

APPROVALS:

The University of Virginia:

By: Leonard W. Sandridge, Jr.  
Leonard W. Sandridge, Jr.  
Executive Vice President and Chief Operating Officer

By: Sara R. Wilson  
Sara R. Wilson, Director

Department of Human Resources Management:

By:  

Date

November 7, 2005

11-14-05
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

THE RECTOR AND VISITORS
OF THE
UNIVERSITY OF VIRGINIA

POLICY GOVERNING
FINANCIAL OPERATIONS AND MANAGEMENT

November 15, 2005
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I. PREAMBLE.

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

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

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

II. DEFINITIONS.

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

“Academic Division” means that part of the University known as State Agency 207.

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

“Board of Visitors” or “Board” means the Rector and Board of Visitors of the University of Virginia.

“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as State Agency 246.

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

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

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

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

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

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

“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

III. SCOPE OF POLICY.

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

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

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

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

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

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

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 year-end 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, and the State Council of Higher Education for Virginia, 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 POLICIES.

The President, acting through the Executive Vice President and Chief Operating Officer, shall create and implement any and all financial 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. 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) To be consistent with the financial incentives set forth in § 2.2-5005 of the Code of
Virginia described above, the University shall not be entitled to receive the amount of interest the
State would have earned on the University’s tuition and fees and other non-general fund
Educational and General Revenues deposited into the State Treasury if the State had continued to
hold and invest such funds itself, until the fiscal year following the fiscal year for which it has
received the required certification from SCHEV. Instead, the State Comptroller and the
University shall enter into an agreement by which the University shall provide the State
Comptroller with its daily cash balances for tuition and fees and other non-general fund
Educational and General Revenues so the State Comptroller can calculate the interest the State would have earned if it had held and invested such funds itself. The State Comptroller shall withhold such amount from the general fund appropriations payable to the University pursuant to the schedule set forth in Section IX below. If, pursuant to subsection C of § 23-9.6:1.01, the University receives the certification that it has met for a particular fiscal year the institutional performance benchmarks called for by that section and approved in the then-current Appropriation Act, the University shall receive such amount withheld for that fiscal year as its financial incentive as provided in paragraph 1 of § 2.2-5005. 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 State 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 withheld from the general fund appropriation distributed to the University pursuant to the schedule set forth in Section IX below.

iv) 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.

v) 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.
vi) 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-twelfth (1/12) of its annual general fund appropriation for Educational and General programs on the first day of each month (less the interest retention specified in Section VII above), and up to 50 percent of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;

ii) the University may draw down the sum of all tuition and E&G fees and all other 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 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. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.
JUNE 10, 2005

BOARD OF VISITORS RESOLUTION

APPROVAL OF THE COMMITMENT TO MEET
THE STATE GOALS INCLUDED IN THE
RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE
OPERATIONS ACT
POLICY DISCUSSION
The Board resumed its meeting, in Open Session, at 1:25 p.m.; all Members present at the meeting before lunch were present.
The purpose of the meeting was the Board’s customary policy discussion, the topic of which was the Restructured Higher Education Financial and Administrative Operations Act, the so-called “Charter Bill,” which was passed by the General Assembly in its final — and as amended by the Governor — form on April 6th. The Board was called upon to approve the University’s commitment to meet the goals specified in the Act, as well as to authorize the University administration to negotiate with the Governor to develop a management agreement with the Commonwealth.
After discussion, the Board approved the following resolutions:

APPROVAL OF THE COMMITMENT TO MEET THE STATE GOALS INCLUDED IN THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT

WHEREAS, the 2005 General Assembly passed HB 2866 and SB 1327 known as the Restructured Higher Education Financial and Administrative Operations Act, as amended by the Governor; and

WHEREAS, eligibility for participation in the Act specifies the formal adoption of a resolution by the Board of Visitors of the public institution of higher education by August 1, 2005, committing to the Governor and to the General Assembly to meet a set of eleven statewide goals as specified in Chapter 4.10, Section 23-38.88 B. of the Act as follows:

1. Consistent with its institutional mission, provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision 4 of §23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the State Council of Higher Education for Virginia. Each such institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with §23-9.2:3.02, ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment, determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition and fees;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission and assess regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions;
4. Ensure that the institution’s academic programs and course offerings maintain high academic standards, by undertaking a continuous review and improvement of academic programs, course availability, faculty productivity, and other relevant factors;

5. Improve student retention such that students progress from initial enrollment to a timely graduation, and that the number of degrees conferred increases as enrollment increases;

6. Consistent with its institutional mission, develop articulation agreements that have uniform application to all Virginia community colleges and meet appropriate general education and program requirements at the four-year institution, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located, and for those institutions subject to a management agreement set forth in Subchapter 3 (§23-38.91 et seq.) of this chapter, in areas that lag the Commonwealth in terms of income, employment, and other factors;

8. Consistent with its institutional mission, increase the level of externally funded research conducted at the institution and facilitate the transfer of technology from university research centers to private sector companies;

9. Work actively and cooperatively with elementary and secondary school administrators, teachers, and students in public schools and school divisions to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

10. Prepare a six-year financial plan consistent with §23-9.2:3.02; and

11. Conduct the institution’s business affairs in a manner that maximizes operational efficiencies and economies for the institution, contributes to maximum efficiencies and economies of state government as a whole and meets the financial and administrative management standards as specified by the Governor pursuant to §2.2-5004 and included in the appropriation act that is in effect, which shall include best practices for electronic
procurement and leveraged purchasing, information technology, real estate portfolio management, and diversity of suppliers through fair and reasonable consideration of small, women, and minority-owned business enterprises.

WHEREAS, upon adoption of this resolution the University of Virginia, the University of Virginia Medical Center, and the University of Virginia’s College at Wise shall be permitted on or after July 1, 2005 to exercise certain financial and administrative operational authority as specified in Chapter 4.10, §23-38.88 A.; and

WHEREAS, after meeting certain performance benchmarks associated with each of the eleven goals as assessed and certified by the State Council of Higher Education for Virginia, the University, the Medical Center, and the College at Wise will be eligible for certain financial incentives such as interest on tuition and fee revenue as outlined in §2.2-5005 of the Act;

RESOLVED that the Board of Visitors of the University of Virginia commits to the Governor and to the General Assembly that it will meet the goals as set forth in this resolution in addition to such other responsibilities as prescribed by law as they pertain to the University of Virginia, the Medical Center, and the College at Wise; and RESOLVED FURTHER that the Board of Visitors requests the President to transmit this resolution to the Governor and the Secretary of Education.