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SENATE BILL NO. 1386

Offered January 9, 2019

Prefiled January 8, 2019

A BILL providing a management agreement between the Commonwealth and James Madison University pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

Patrons—McDougle and Surovell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the following shall hereafter be known as the 2019 Management Agreement Between the Commonwealth of Virginia and James Madison University:

MANAGEMENT AGREEMENT

BY AND BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

JAMES MADISON UNIVERSITY

This MANAGEMENT AGREEMENT, executed this 15th day of November, 2018, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and James Madison University (hereafter, the University) provides as follows:

RECITALS

WHEREAS, the University has satisfied the conditions precedent set forth in §§ 23.1-1004 and 23.1-1005 of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Article 4 (§ 23.1-1004 et seq.) of the Restructured Higher Education Financial and Administrative Operations Act, Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia ("Article 4" 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 September 14, 2018, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision B 2 of § 23.1-1004 of the Act;

2. Written Application to the Governor. The University has submitted to the Governor a written application, dated July 10, 2018, 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 Article 4 of the Act, and substantiating that the University has fulfilled the requirements of subdivision B 3 of § 23.1-1004 of the Act; and

3. Finding by the Governor. In accordance with § 23.1-1005 of the Act, the Governor has found that the University has fulfilled the requirements of § 23.1-1004 of the Act, and therefore has authorized Cabinet Secretaries 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 B of § 23.1-1004 and Article 4 of the Act.

AGREEMENT

NOW, THEREFORE, in accordance with the provisions of the Act, 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:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.

"Agreement" or "management agreement" means this agreement between the Commonwealth of Virginia and the University as required by Article 4 of the Act.

"Board of visitors" or "board" means the rector and board of visitors of the University.

"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

59 with the provisions of Article 4 of the Act.

60 "Enabling statutes" means those chapters, other than Chapter 10 of Title 23.1 of the Code of  
61 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and  
62 missions of the individual public institutions of higher education of the Commonwealth.

63 "Parties" means the parties to this management agreement, the Commonwealth of Virginia and the  
64 University.

65 "Public institution of higher education" means associate-degree-granting and baccalaureate public  
66 institutions of higher education, as those terms are defined in § 23.1-100 of the Code of Virginia.

67 "University" means James Madison University.

## 68 ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

### 69 SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.

70 Article 4 of the Act provides that, upon the execution of, and as of the effective date for, this  
71 management agreement, the University shall become a covered institution entitled to be granted by the  
72 Commonwealth and to exercise the powers and authority provided in Article 4 of the Act that are  
73 expressly contained in this management agreement. In general, subject to its management agreement  
74 with the Commonwealth, status as a covered institution governed by Article 4 of the Act and this  
75 management agreement is intended to replace (i) the post-General Assembly authorization  
76 prior-approval system of reviews, approvals, policies, and procedures carried out and implemented by a  
77 variety of central state agencies with (ii) a post-audit system of reviews and accountability under which  
78 a covered institution is fully responsible and fully accountable for managing itself pursuant to Article 4  
79 of the Act and its management agreement with the Commonwealth.

80 SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the  
81 enhanced authority granted by Article 4 of the Act and this management agreement, and the board of  
82 visitors policies attached hereto as Exhibits A through F, shall be subject to the reviews, assessments,  
83 and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint  
84 Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, (ii)  
85 as may be conducted periodically by the Secretaries of Finance, Administration, Education, or by some  
86 combination of these three Secretaries, or (iii) as otherwise may be required by law other than the Act.

87 SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and  
88 limitations contained in § 23.1-1008 (Operational Authority Generally), §§ 23.1-1016, 23.1-1017, and  
89 23.1-1019 (Capital Projects; Procurement; Property Generally), and §§ 23.1-1020 through 23.1-1026  
90 (Human Resources) of Article 4 of the Act, the Commonwealth and the University agree that the  
91 Commonwealth has granted to the University by this management agreement all the powers and  
92 authority contained in certain policies adopted by the board of visitors of the University attached hereto  
93 as Exhibits A through F and governing (i) the undertaking and implementation of capital projects, and  
94 other acquisition and disposition of property (Exhibit A), (ii) the leasing of property, including capital  
95 leases (Exhibit B), (iii) information technology (Exhibit C), (iv) the procurement of goods, services,  
96 including certain professional services, insurance, and construction (Exhibit D), (v) human resources  
97 (Exhibit E), and (vi) its system of financial management (Exhibit F), including, as provided in subsection  
98 B of § 23.1-1012 of the Act, the sole authority to establish tuition, fees, room, board, and other charges  
99 consistent with sum sufficient appropriation authority for nongeneral funds as provided by the Governor  
100 and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the  
101 specific conditions and limitations contained in §§ 23.1-1008 through 23.1-1011 of the Act, in this  
102 management agreement, and in one or more of the board of visitors policies attached hereto as Exhibits  
103 A through F, the Commonwealth and the University agree that the Commonwealth has expressly granted  
104 to the University all the powers and authority permitted by the Act.

105 The board of visitors of the University shall at all times be fully and ultimately accountable for the  
106 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
107 of, this management agreement and the policies adopted by it and attached as Exhibits A through F.  
108 Consistent with this full and ultimate accountability, however, the board may, pursuant to its legally  
109 permissible procedures, specifically delegate the duties and responsibilities set forth in this management  
110 agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the  
111 board and attached hereto as Exhibits A through F, to a person or persons within the University.

112 SECTION 2.1.3. Reimbursement by the University of Certain Costs. By July 1 of each odd-numbered  
113 year, the University shall inform the Secretary of Finance of any intent during the next biennium to  
114 withdraw from any health or other group insurance or risk management program made available to the  
115 University through any agency, body corporate, political subdivision, authority, or other entity of the  
116 Commonwealth, and in which the University is then participating, to enable the Commonwealth's  
117 actuaries to complete an adverse selection analysis of any such decision and to determine the additional  
118 costs to the Commonwealth that would result from any such withdrawal. If upon notice of such  
119 additional costs to the Commonwealth, the University proceeds to withdraw from such health or other  
120 group insurance or risk management program, the University shall, pursuant to subdivision B 5 of

121 § 23.1-1004 of the Act, reimburse the Commonwealth for all such additional costs attributable to such  
122 withdrawal as determined by the Commonwealth's actuaries.

123 SECTION 2.1.4. *Potential Impact on Virginia College Savings Plan.* As required by subdivision B 6  
124 of § 23.1-1004 of the Act, the University has given consideration to potential future impacts of tuition  
125 increases on the Virginia College Savings Plan, Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 of the Code  
126 of Virginia and has discussed those potential impacts with the Executive Director and staff of that Plan  
127 and with parties in the Administration who participated in the development of this management  
128 agreement. The Executive Director of the Plan has provided to the University and the Commonwealth  
129 the Plan's assumptions underlying the contract pricing of the program.

130 SECTION 2.1.5. *Justification for Deviations from the Virginia Public Procurement Act.* Pursuant to  
131 § 23.1-1017 of the Act and subject to the provisions of this management agreement, the University may  
132 be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ 2.2-4300  
133 et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the  
134 VPPA must be uniform across all institutions governed by Article 4 of the Act, and the board of visitors  
135 shall adopt and comply with procurement policies that are based upon competitive principles and seek  
136 competition to the maximum practical degree. The Policy Governing the Procurement of Goods,  
137 Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules  
138 Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules)  
139 attached to such policy as Attachment 1 constitute the policies and uniform deviations from the VPPA  
140 required by subsections A and B of § 23.1-1017 of the Act.

141 Subsection E of § 23.1-1017 of the Act requires that the University identify the public, educational,  
142 and operational interests served by any procurement rule or rules that deviate from those in the VPPA.  
143 The adopted board of visitors policy on procurement and the Procurement Rules provide the University  
144 with the autonomy to administer its procurement process while fully adhering to the principle that  
145 competition should be sought to the maximum extent feasible. This autonomy will better position the  
146 University to support the requirements of its growing teaching, research, and outreach missions. Greater  
147 autonomy in procurement will improve internal capacity to respond quickly to emergent material and  
148 service issues and, therefore, enable the University to be more efficient and effective in meeting the  
149 Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced.  
150 Taken collectively, the University's procurement policies and rules that differ from those required by the  
151 VPPA will enhance procurement "best practices" as they currently are being observed within the higher  
152 education community nationally. Further, these changes will provide efficiencies to both the University  
153 and public sector suppliers.

154 SECTION 2.1.6. *Quantification of Cost Savings.* Subsection D of § 23.1-1012 of the Act requires that  
155 a covered institution include in its management agreement with the Commonwealth the quantification of  
156 cost savings realized as a result of the additional operational flexibility provided pursuant to Article 4  
157 of the Act. Since this initial management agreement with the Commonwealth has not yet been  
158 implemented by the University, the parties agree that the University is not in a position to quantify any  
159 such cost savings at this time, although the University expects that there will be cost savings resulting  
160 from the additional authority granted to the University pursuant to Article 4 of the Act and that such  
161 cost savings will be part of the determinations made during the reviews, assessments, and audits to be  
162 conducted pursuant to Article 4 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit  
163 and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise  
164 described in Section 2.1.1 above.

165 SECTION 2.1.7. *Participation in State Programs.* The Commonwealth intends that the University  
166 shall continue to fully participate in, and receive funding support from, the many and varied programs  
167 established now or in the future by the Commonwealth to provide support for Virginia's public  
168 institutions of higher education and for Virginians attending such institutions, including but not limited  
169 to the state capital outlay and bond financing initiatives undertaken from time to time by the  
170 Commonwealth; the Higher Education Equipment Trust Fund established pursuant to Chapter 12 (§  
171 23.1-1200 et seq.) of Title 23.1 of the Code of Virginia; the Maintenance Reserve Fund as provided in  
172 the general appropriation act; the Eminent Scholars program as provided in the general appropriation  
173 act; the Commonwealth's various student financial assistance programs; and other statewide programs  
174 or initiatives that exist, or may be established, in support of the Commonwealth's higher education  
175 institutions, programs, or activities.

176 SECTION 2.1.8. *Implied Authority.* Pursuant to subsection C of § 23.1-1006 of the Act, the only  
177 implied authority granted to the University by this management agreement is that implied authority that  
178 is actually necessary to carry out the expressed grant of financial or operational authority contained in  
179 this agreement or in the policies adopted by the University's board of visitors and attached hereto as  
180 Exhibits A through F.

181 SECTION 2.1.9. *Exercise of Authority.* The University and the Commonwealth acknowledge and

182 agree that the execution of this management agreement constitutes the conclusion of a process that, as  
183 of the effective date of this Agreement, confers upon the University the enhanced authority and  
184 operating flexibility described in this article above, all of which is in furtherance of the purposes of  
185 Article 4 of the Act. Therefore, without any further conditions or requirements, the University shall, on  
186 and after the effective date of this management agreement, be authorized to exercise the authority  
187 conferred upon it by this management agreement, the policies adopted by its board of visitors attached  
188 hereto as Exhibits A through F, and by §§ 23.1-1008 through 23.1-1011 of the Act, except to the extent  
189 that the powers and authority contained therein have been limited by this management agreement or the  
190 board of visitors policies attached hereto as Exhibits A through F.

191 The University and the Commonwealth also acknowledge and agree that, pursuant to subsection L of  
192 § 23.1-1006 of the Act and consistent with the terms of this management agreement, the board of  
193 visitors of the University shall assume full responsibility for management of the University, subject to  
194 the requirements and conditions set forth in Article 4 of the Act, the general requirements for this  
195 management agreement as provided in § 23.1-1002 of the Act, and this management agreement. The  
196 board of visitors shall be fully accountable for (i) the management of the University as provided in the  
197 Act, (ii) meeting the requirements of §§ 23.1-206 and 23.1-306 of the Code of Virginia, and (iii) meeting  
198 such other provisions as are set forth in this management agreement.

199 **SECTION 2.2. State Goals.**

200 **SECTION 2.2.1. Furthering State Goals.** As required for all public institutions of higher education of  
201 the Commonwealth by subsection A of § 23.1-1002 of the Act, prior to August 1, 2005, the board of  
202 visitors of the University adopted the resolution setting forth its commitment to the Governor and the  
203 General Assembly to meet the state goals specified in subsection A of § 23.1-1002 of the Act.

204 **SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid.** As required by § 23.1-306 of the  
205 Code of Virginia, the University, along with all other public institutions of higher education of the  
206 Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia  
207 (SCHEV) by October 1, 2018, an institution-specific six-year plan addressing the University's academic,  
208 financial, and enrollment plans for the six-year period of fiscal years 2018-2020 through 2022-2024.  
209 Subsection A of § 23.1-306 of the Code of Virginia requires the University to update this six-year plan  
210 by July 1 of each odd-numbered year and amend or affirm biennially in each even-numbered year.  
211 Subdivision B 3 of § 23.1-1006 of the Act requires that a management agreement address, among other  
212 issues, such matters as the University's undergraduate Virginia student enrollment, its financial aid  
213 requirements and capabilities, and its tuition policy for undergraduate Virginia students. These matters  
214 are addressed in this section and in the University's six-year plan submitted to SCHEV, and the parties  
215 therefore agree that the University's six-year plan and the description in this section meet the  
216 requirement of subdivision B 3 of § 23.1-1006 of the Act.

217 Subsection C of § 23.1-1012 of the Act requires the board of visitors of the University to include in  
218 this management agreement the University's commitment to provide need-based grant aid for  
219 middle-income and lower-income Virginia students in a manner that encourages student enrollment and  
220 progression without respect to potential increases in tuition and fees. The University's commitment in  
221 this regard is clear. The University is committed to increasing the economic and social diversity of the  
222 student body at the University. The University is committed to assuring access to qualified and admitted  
223 Virginia students.

224 To address the challenges associated with the rising costs of college, the University uses  
225 institutional, state, and federal funding to help mitigate the effect of rising costs on students from  
226 low-income and middle-income families. The University awards financial aid based on the U.S.  
227 Department of Education's federal methodology. The federal methodology is used in all of the  
228 University's aid packaging that includes institutional, state, and federal funding. The University's  
229 financial aid packaging processes and procedures target the neediest enrolled applicants, as required  
230 under state and federal law. Based on the Health and Human Services poverty levels, about 40 percent  
231 of the University's enrolled undergraduate applicants for federal financial aid fall into the low-income  
232 and middle-income range.

233 For 2018-2019, the Expected Family Contribution (EFC) cutoff for awarding Virginia Student  
234 Financial Assistance Program (VSFAP) and University grants to on-time, in-state, undergraduate  
235 financial aid filers was \$9,500. This definition of middle class was used to award financial aid dollars  
236 to needy students. The University's ultimate goal for the future is to increase the EFC cutoff that will be  
237 equal to or above one-half the cost of attendance. The \$9,500 EFC cutoff in 2017-18 equaled 36.5  
238 percent of the full-time, in-state cost of attendance.

239 To move forward in accomplishing its goals, over the period of the six-year plan, the University is  
240 committed to seeking, from all sources—state-appropriated scholarship funds and federal, institutional,  
241 and private support—to continue its commitment to providing additional financial aid through grants  
242 and loans to those Virginians with need. In addition, as tuition and fees increase over the period of the  
243 six-year plan, the University will readjust the level of financial aid funding so that insufficiency of

244 family resources will not be a barrier to attending the University.

245 The Commonwealth and the University agree that this commitment meets the requirements of  
246 subsection C of § 23.1-1012 of the Act.

247 SECTION 2.3. Other Law.

248 As provided in subsection C of § 23.1-1006 of the Act, the University shall be governed and  
249 administered in the manner provided not only in this management agreement, but also as provided in  
250 the general appropriation act then in effect and the University's enabling statutes.

251 SECTION 2.4. The General Appropriation Act.

252 The Commonwealth and the University agree that, pursuant to the current terms of the Act and the  
253 terms of § 4-11.00 of the 2004-2006 Appropriation Act, if there is a conflict between the provisions of  
254 the general appropriation act and the provisions of Article 4 of the Act, or this management agreement,  
255 or the board of visitors policies attached to this management agreement as Exhibits A through F, the  
256 provisions of the general appropriation act shall control, and shall continue to control unless provided  
257 otherwise by law.

258 SECTION 2.4.1. The University's Enabling Statutes. As provided in subsection E of § 23.1-1006 of  
259 the Act, in the event of a conflict between any provision of Article 4 of this Act and the University's  
260 enabling statutes, the enabling statutes shall control.

261 SECTION 2.4.2. Title 2.2 of the Code of Virginia. As provided in subsection D of § 23.1-1006 of the  
262 Act, except as specifically made inapplicable under Article 4 of the Act and the express terms of this  
263 management agreement, the provisions of Title 2.2 relating generally to the operation, management,  
264 supervision, regulation, and control of public institutions of higher education shall be applicable to the  
265 University as provided by the express terms of this management agreement. As further provided in  
266 subsection E of § 23.1-1006 of the Act, in the event of conflict between any provision of Title 2.2 and  
267 any provision of Article 4 of the Act as expressed in this management agreement, the provisions of this  
268 management agreement shall control.

269 SECTION 2.4.3. Educational Policies of the Commonwealth. As provided in subsection J of  
270 § 23.1-1006 of the Act, for purposes of §§ 23.1-101, 23.1-102, 23.1-103, 23.1-104, and 23.1-107,  
271 Chapter 2 (§ 23.1-200 et seq.), §§ 23.1-306, 23.1-402, 23.1-403, and 23.1-404, Chapter 5 (§ 23.1-500  
272 et seq.), Chapter 6 (§ 23.1-600 et seq.), Chapter 7 (§ 23.1-700 et seq.), §§ 23.1-800, 23.1-801, 23.1-901,  
273 and 23.1-1001, Chapter 11 (§ 23.1-1100 et seq.), Chapter 12 (§ 23.1-1200 et seq.), subsections G, H,  
274 and I of § 23.1-1300, § 23.1-1302, and subsection B of § 23.1-1303 of Title 23.1 the Code of Virginia,  
275 each covered institution shall remain a public institution of higher education following its conversion to  
276 a covered institution governed by Article 4 of the Act and shall retain the authority granted and any  
277 obligations required by such provisions.

278 In addition, the University shall retain the authority, and any obligations related to the exercise of  
279 such authority, that is granted to institutions of higher education pursuant to Chapter 2 (§ 23.1-200 et  
280 seq.), Chapter 11 (§ 23.1-1100 et seq.), Chapter 12 (§ 23.1-1200 et seq.), Chapter 6, Article 2  
281 (§ 23.1-612 et seq.), Chapter 6, Article 3 (§ 23.1-617 et seq.), Chapter 6, Article 5 (§ 23.1-628 et seq.),  
282 Chapter 6, Article 6 (§ 23.1-636 et seq.), § 23.1-619, Chapter 6, Article 7 (§ 23.1-639 et seq.), and  
283 Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 the Code of Virginia, unless and until provided otherwise by  
284 law other than the Act.

285 SECTION 2.4.4. Public Access to Information. The University shall continue to be subject to  
286 § 2.2-4342 of the Code of Virginia and to the provisions of the Virginia Freedom of Information Act,  
287 Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct  
288 business pursuant to § 2.2-3709 of the Code of Virginia if expressly named therein and, in all cases,  
289 may conduct business as a "state public body" for purposes of subsection B of § 2.2-3708 of the Code of  
290 Virginia.

291 SECTION 2.4.5. Conflicts of Interests. As provided in subsection F of § 23.1-1006 of the Act, the  
292 provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.)  
293 of Title 2.2 of the Code of Virginia, that are applicable to officers and employees of a state  
294 governmental agency shall continue to apply to the members of the board of visitors of the University  
295 and to its covered employees.

296 SECTION 2.4.6. Other Provisions of the Code of Virginia. Other than as specified in this article  
297 above, any other powers and authorities granted to the University pursuant to any other sections of the  
298 Code of Virginia, including other provisions of the Act, are not affected by this management agreement  
299 or the board policies attached hereto as Exhibits A through F.

300 ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE,  
301 MANAGEMENT AGREEMENT.

302 SECTION 3.1. Amendments.

303 Any change to or deviation from this management agreement or the board of visitors policies  
304 attached hereto as Exhibits A through F shall be reported to the Secretaries of Finance, Administration,

305 *and Education and to the Chairmen of the Senate Committee on Finance and the House Committee on*  
 306 *Appropriations and shall be posted on the University's website. The change or deviation shall become*  
 307 *effective unless one of the above persons notifies the University in writing within 60 days that the*  
 308 *change or deviation is substantial and material. Any substantial and material change or deviation shall*  
 309 *require the execution by the parties of an amendment to this management agreement or a new*  
 310 *management agreement and may lead to the Governor declaring this management agreement to be void*  
 311 *pursuant to subdivision E of § 23.1-1007 of the Act.*

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

313 *SECTION 3.2.1. Governor. Pursuant to subdivision E of § 23.1-1007, if the Governor makes a*  
 314 *written determination that the University is not in substantial compliance with the terms of this*  
 315 *management agreement or with the requirements of the Act in general, (i) the Governor shall provide a*  
 316 *copy of that written determination to the rector of the board of visitors of the University and to the*  
 317 *members of the General Assembly, and (ii) the University shall develop and implement a plan of*  
 318 *corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with*  
 319 *the terms of this management agreement and with the requirements of the Act, as soon as practicable,*  
 320 *and shall provide a copy of such corrective action plan to the members of the General Assembly. If,*  
 321 *after a reasonable period of time after the corrective action plan has been implemented by the*  
 322 *University, the Governor determines that the institution is not yet in substantial compliance with this*  
 323 *management agreement or the requirements of the Act, the Governor may void this management*  
 324 *agreement. Upon the Governor voiding this management agreement, the University shall no longer be*  
 325 *allowed to exercise any restructured financial or operational authority pursuant to the provisions of*  
 326 *Article 4 of the Act unless and until the University has entered into a subsequent management*  
 327 *agreement with the Secretary or Secretaries designated by the Governor or the voided management*  
 328 *agreement is reinstated by the General Assembly.*

329 *SECTION 3.2.2. General Assembly. As provided in subsection E of § 23.1-1007 of the Act, the*  
 330 *General Assembly may reinstate a management agreement declared void by the Governor. Pursuant to*  
 331 *subsection F of § 23.1-1007 of the Act, the University's status as a covered institution governed by*  
 332 *Article 4 of the Act may be revoked by an act of the General Assembly if the University fails to meet the*  
 333 *requirements of Article 4 of the Act or the management agreement.*

334 *ARTICLE 4. GENERAL PROVISIONS.*

335 *SECTION 4.1. No Third-Party Beneficiary Status.*

336 *Nothing in this Agreement, express or implied, shall be construed as conferring any third-party*  
 337 *beneficiary status on any person or entity.*

338 *SECTION 4.2. Sovereign Immunity.*

339 *Pursuant to subsections G and H of § 23.1-1006 of the Act, the University and the members of its*  
 340 *board of visitors, officers, directors, employees, and agents shall be entitled to the same sovereign*  
 341 *immunity to which they would be entitled if the University were not governed by the Act, provided that*  
 342 *the Virginia Tort Claims Act, Article 18.1 (§ 8.01-195.1 et seq.) of Chapter 3 of Title 8.01 of the Code*  
 343 *of Virginia, and its limitations on recoveries shall remain applicable with respect to the University.*

344 *SECTION 4.3. Term of Agreement.*

345 *The management agreement negotiated by the University shall continue in effect unless the Governor,*  
 346 *the General Assembly, or the University determine that the management agreement needs to be*  
 347 *renegotiated or revised.*

348 *WHEREFORE, the foregoing management agreement has been executed as of this 15th day of*  
 349 *November, 2018, and shall become effective on the effective date of the legislation enacted into law*  
 350 *providing for the terms of such Agreement.*

351 *EXHIBIT A*

352  
 353 *MANAGEMENT AGREEMENT*

354 *BETWEEN*

355 *THE COMMONWEALTH OF VIRGINIA*

356 *AND*

357 *JAMES MADISON UNIVERSITY*

358 *PURSUANT TO*

359 *THE RESTRUCTURED HIGHER EDUCATION*

360 *FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT*

361  
 362 *POLICY GOVERNING*

363 *CAPITAL PROJECTS*

364  
 365 *THE RECTOR AND BOARD OF VISITORS*

366 *OF JAMES MADISON UNIVERSITY*

## POLICY GOVERNING CAPITAL PROJECTS

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## I. PREAMBLE.

Pursuant to Article 4 (§ 23.1-1004 et seq.) of the Restructured Higher Education Financial and Administrative Operations Act (the Act), upon becoming a covered institution, a public institution of higher education in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a covered institution is designed to replace the post-authorization system of reviews, approvals, policies, and procedures carried out by a variety of central state agencies, and also the traditional pre-authorization approval process for projects funded entirely with nongeneral funds and without any proceeds from state tax-supported debt. Consistent with its current practice, 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 general fund appropriation of the General Assembly, state tax-supported debt, or funding from other sources.

This policy is intended to encompass and implement the expanded authority that may be granted to the University pursuant to Article 4 of the Act. Any other powers and authorities granted to the University pursuant to the general appropriation act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's enabling statutes, are not affected by this policy.

## II. DEFINITIONS.

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

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.

"Board of visitors" or "board" means the rector and board of visitors of the University.

"Capital lease" means a lease that is defined as such within generally accepted accounting principles pursuant to the pronouncement of the Financial Accounting Standards Board.

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

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

"Covered institution" means, on and after the effective date of its initial management agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Article 4 of the Act.

"Enabling statutes" has the same meaning as provided in § 23.1-1000 of the Act.

"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 \$3 million or more, improvements or renovations of \$3 million or more, and capital leases.

"State tax-supported debt" means bonds, notes, or other obligations issued under Article X, Section 9 (a), 9 (b), 9 (c), or 9 (d) of the Constitution of Virginia, if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 19, 2017, 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 James Madison University.

## 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 (i) the process for developing one or more capital project programs for the University, (ii) authorization of new capital projects, (iii) procurement of capital professional services and construction services, (iv) design reviews and code approvals for capital projects, (v) environmental impact requirements, (vi) building demolitions, (vii) building and land acquisitions, (viii) building and land dispositions, (ix) project management systems, and (x) 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

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SB1386

428 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
429 of, this policy. Consistent with this full and ultimate accountability, however, the board may, pursuant to  
430 its legally permissible procedures, specifically delegate either herein or by separate board resolution the  
431 duties and responsibilities set forth in this policy to a person or persons within the University, who,  
432 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
433 implementation of those duties and responsibilities pursuant to the University's usual delegation policies  
434 and procedures.

#### 435 V. CAPITAL PROGRAM.

436 The President of the University, acting through the Senior Vice President of Administration and  
437 Finance or his designee, shall adopt a system for developing one or more capital project programs that  
438 defines or define the capital needs of the University for a given period of time consistent with the  
439 University's published Master Plan. This process may or may not mirror the Commonwealth's  
440 requirements for capital plans. The board of visitors shall approve the program for major capital  
441 projects. Major capital projects that are to be funded entirely or in part by a general fund  
442 appropriation of the General Assembly or proceeds from state tax-supported debt shall follow the  
443 Commonwealth's requirements for capital plans. The board may approve amendments to the program  
444 for major capital projects annually or more often if circumstances warrant.

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

#### 451 VI. AUTHORIZATION OF CAPITAL PROJECTS.

452 The board of visitors shall authorize the initiation of each major capital project by approving its  
453 size, scope, budget, and funding. The President of the University, acting through the Senior Vice  
454 President of Administration and Finance or his designee, shall adopt procedures for approving the size,  
455 scope, budget, and funding of all other capital projects. Major capital projects that are to be funded  
456 entirely or in part by a general fund appropriation of the General Assembly or proceeds from state  
457 tax-supported debt shall require both board of visitors approval and those pre-appropriation approvals  
458 of the State's governmental agencies then applicable, and shall follow the State's process for capital  
459 budget requests.

460 It shall be the policy of the University that the implementation of capital projects shall be carried  
461 out so that the capital project as completed is the capital project approved by the board for major  
462 capital projects and according to the procedures adopted by the President of the University, acting  
463 through the Senior Vice President of Administration or his designee, for all other capital projects. The  
464 President of the University, acting through the Senior Vice President of Administration and Finance or  
465 his designee, shall ensure strict adherence to this requirement.

466 Accordingly, the budget, size, and scope of a capital project shall not be materially changed beyond  
467 the plans and justifications that were the basis for the capital project's approval, either before or during  
468 construction, unless approved in advance as described in this section above. Minor changes shall be  
469 permissible if they are determined by the President of the University, acting through the Senior Vice  
470 President of Administration and Finance or his designee, to be justified.

471 Major capital projects may be submitted for board of visitors authorization at any time but must  
472 include a statement of urgency if not part of the approved major capital project program.

#### 473 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 474 SERVICES.

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

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

483 2. Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the  
484 appearance of any impropriety prohibited by state law or University policy;

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

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

489 5. Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against



490 employees or applicants because of race, religion, color, sex, national origin, age, disability, or other  
 491 basis prohibited by state law except where there is a bona fide occupational qualification reasonably  
 492 necessary to the contractor's normal operations; and

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

496 The President of the University, acting through the Senior Vice President of Administration and  
 497 Finance or his designee, is authorized to develop implementing procedures for the procurement of  
 498 capital professional services and construction services at the University. The procedures shall implement  
 499 this policy and provide for:

500 a. A system of competitive negotiation for capital professional services, including a procedure for  
 501 expedited procurement of capital professional services under \$80,000, pursuant to subdivisions 1, 2, and  
 502 3 a of the defined term "competitive negotiation" in § 4 of the Rules Governing Procurement of Goods,  
 503 Services, Insurance, and Construction;

504 b. A prequalification procedure for contractors or products;

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

507 d. A prompt payment procedure.

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

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

512 The board of visitors shall review the design of all major capital projects and shall provide final  
 513 major capital project authorization based on the size, scope, and cost estimate provided with the design.  
 514 Unless stipulated by the board of visitors at the design review, no further design reviews shall be  
 515 required. For all capital projects other than major capital projects, the President of the University,  
 516 acting through the Senior Vice President for Administration and Finance or his designee, shall adopt  
 517 procedures for design review and project authorization based on the size, scope, and cost estimate  
 518 provided with the design. It shall be University policy that all capital projects shall be designed and  
 519 constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC)  
 520 standards and the applicable accessibility code.

521 The President of the University, acting through the Senior Vice President of Administration and  
 522 Finance or his designee, shall designate a building official responsible for building code compliance at  
 523 the University, by either (i) hiring an individual to be the University building official or (ii) continuing  
 524 to use the services of the Department of General Services, Division of Engineering and Buildings, to  
 525 perform the building official function. If option (i) is selected, the individual hired as the University  
 526 building official shall be a full-time employee of the University who has no other assigned duties or  
 527 responsibilities at the institution and who is not employed by any firm or business providing facility  
 528 services to the University, is a registered professional architect or engineer, and is certified by the  
 529 Department of Housing and Community Development to perform this building official function. The  
 530 University building official shall issue building permits for each capital project required by the VUSBC  
 531 to have a building permit, shall determine the suitability for occupancy of, and shall issue certifications  
 532 for building occupancy for, all capital projects requiring such certification. Prior to issuing any such  
 533 certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that  
 534 capital project and that such capital project has been inspected by the State Fire Marshal or his  
 535 designee as required. When serving as the University building official, such individual shall  
 536 organizationally report directly and exclusively to the board of visitors. If the University hires its own  
 537 University building official, it shall fulfill the code review requirement by maintaining a review unit of  
 538 licensed professional architects or engineers supported by resources and staff who are certified by the  
 539 Department of Housing and Community Development in accordance with § 36-137 of the Code of  
 540 Virginia for such purpose and who shall review plans, specifications, and documents for compliance  
 541 with building codes and standards and perform required inspections of work in progress and the  
 542 completed capital project. No individual licensed professional architect or engineer hired under the  
 543 University personnel system as a member of the review unit or contracted with to perform these  
 544 functions shall also perform other building code-related design, construction, facilities-related project  
 545 management, or facilities management functions for the University on the same capital project.

#### 546 IX. ENVIRONMENTAL IMPACT REPORTS.

547 It shall be the policy of the University to assess the environmental, historic preservation, and  
 548 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts  
 549 to the extent practicable. The University shall develop a procedure for the preparation and approval of  
 550 environmental impact reports for capital projects, in accordance with state environmental, historic

551 preservation, and conservation requirements generally applicable to capital projects otherwise meeting  
552 the definition of major capital projects but with a cost of \$500,000 or more as set forth in § 10.1-1188  
553 of the Code of Virginia.

554 X. BUILDING DEMOLITIONS.

555 It shall be the policy of the University to consider the environmental and historical aspects of any  
556 proposed demolitions. The University shall develop a procedure for the preparation and review of  
557 demolition requests, including any necessary reviews by the Department of Historic Resources and the  
558 Art and Architectural Review Board in accordance with state historic preservation requirements  
559 generally applicable to capital projects in the Commonwealth. Further, for any property that was  
560 acquired or constructed with funding from a general fund appropriation of the General Assembly or  
561 from proceeds from state tax-supported debt, general laws applicable to state-owned property shall  
562 apply.

563 XI. BUILDING OR LAND ACQUISITIONS.

564 It is the policy of the University that capital projects involving building or land acquisition shall be  
565 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real  
566 property. The President of the University, acting through the Senior Vice President of Administration  
567 and Finance or his designee, shall ensure that the project management system implemented pursuant to  
568 Section XIII of this policy provides for a review and analysis of all pertinent matters relating to the  
569 acquisition of buildings and land as any prudent purchaser would perform to the end that any building  
570 or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be  
571 made without substantial risk of liability to the University, and that the cost of the real property to be  
572 acquired, together with any contemplated development thereof, shall be such that compliance with the  
573 provisions of Section VI of this policy is achieved. In addition, the President of the University, acting  
574 through the Senior Vice President of Administration and Finance or his designee, shall ensure that,  
575 where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of  
576 buildings or land for capital projects are carried out.

577 A. Environmental and Land Use Considerations.

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

585 B. Infrastructure and Site Condition.

586 The President of the University, acting through the Senior Vice President of Administration and  
587 Finance or his designee, shall ensure that, in the case of capital projects involving the acquisition of  
588 buildings or land, the project management systems implemented under Section XIII of this policy provide  
589 for a review of the following matters prior to acquisition of the building or land: that any land can be  
590 developed for its intended purpose without extraordinary cost; that an environmental engineer has been  
591 engaged by the University to provide an assessment of any environmental conditions on the land; that  
592 there is adequate vehicular ingress and egress to serve the contemplated use of the building or land;  
593 that utilities and other services to the land are adequate or can reasonably be provided or have been  
594 provided in the case of building acquisitions; and that the condition and grade of the soils have been  
595 examined to determine if any conditions exist that would require extraordinary site work.

596 C. Title and Survey.

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

606 D. Appraisal.

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

609 XII. BUILDING OR LAND DISPOSITIONS.

610 The board of visitors shall approve the disposition of any building or land. Disposition of land or  
611 buildings, the acquisition or construction of which was funded entirely or in part by a general fund  
612 appropriation of the General Assembly or proceeds from state tax-supported debt, shall require both

613 board of visitors approval and other approvals in accordance with general law applicable to  
614 state-owned property and with the University's enabling statutes.

615 XIII. PROJECT MANAGEMENT SYSTEMS.

616 The President of the University, acting through the Senior Vice President of Administration and  
617 Finance or his designee, shall implement one or more systems for the management of capital projects  
618 for the University. The systems may include the delegation of project management authority to  
619 appropriate University officials, including a grant of authority to such officials to engage in further  
620 delegation of authority as the President of the University deems appropriate.

621 The project management systems for capital projects shall be designed to ensure that such projects  
622 comply with the provisions of this policy and other board of visitors policies applicable to closely  
623 related subjects such as the selection of architects or policies applicable to University buildings and  
624 grounds.

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

629 XIV. REPORTING REQUIREMENTS.

630 In addition to complying with any internal reporting systems contained in the University's project  
631 management systems, as described in Section XIII above, the University shall comply with state  
632 reporting requirements for those major capital projects funded entirely or in part by a general fund  
633 appropriation of the General Assembly or state tax-supported debt. Additionally, if any capital project  
634 constructs improvements on land, or renovates property, that originally was acquired or constructed in  
635 whole or in part with a general fund appropriation for that purpose or proceeds from state  
636 tax-supported debt, and such improvements or renovations are undertaken entirely with funds not  
637 appropriated by the General Assembly, and if the cost of such improvements or renovations is  
638 reasonably expected to exceed \$2 million, the decision to undertake such improvements or renovations  
639 shall be communicated as required by subdivision D 3 of § 23.1-1016 of the Act. As a matter of routine,  
640 the President of the University, acting through the Senior Vice President of Administration and Finance  
641 or his designee, shall report to the Department of General Services on the status of such capital  
642 projects at the initiation of the project, prior to the commencement of construction, and at the time of  
643 acceptance of any such capital project.

644 EXHIBIT B

645  
646 MANAGEMENT AGREEMENT  
647 BETWEEN  
648 THE COMMONWEALTH OF VIRGINIA  
649 AND  
650 JAMES MADISON UNIVERSITY  
651 PURSUANT TO  
652 THE RESTRUCTURED HIGHER EDUCATION  
653 FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
654  
655 POLICY GOVERNING LEASES OF REAL PROPERTY  
656  
657 THE RECTOR AND BOARD OF VISITORS  
658 OF JAMES MADISON UNIVERSITY  
659 POLICY GOVERNING LEASES OF REAL PROPERTY

660 I. PREAMBLE.

661 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter  
662 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia, provides that, upon becoming a covered  
663 institution, the University may have the authority to establish its own system for the leasing of real  
664 property. The University's system for implementing this authority is governed by policies adopted by the  
665 board of visitors. The following provisions of this policy constitute the adopted board of visitors policies  
666 regarding leases of real property entered into by the University.

667 This policy is intended to cover the authority that may be granted to the University pursuant to  
668 Article 4 of the Act. Any other powers and authorities granted to the University pursuant to the general  
669 appropriation act, or any other sections of the Code of Virginia, including other provisions of the Act  
670 and the University's enabling statutes, as defined in § 23.1-1000 of the Act, are not affected by this  
671 policy.

672 II. DEFINITIONS.

673 The following words and terms, when used in this policy, shall have the following meaning unless

674 *the context clearly indicates otherwise:*

675 *"Act" means the Restructured Higher Education Financial and Administrative Operations Act,*  
676 *Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.*

677 *"Board of visitors" or "board" means the rector and board of visitors of the University.*

678 *"Capital lease" means a lease that is defined as such within generally accepted accounting principles*  
679 *pursuant to the pronouncement of the Financial Accounting Standards Board.*

680 *"Covered institution" means a public institution of higher education of the Commonwealth of*  
681 *Virginia that has entered into a management agreement with the Commonwealth to be governed by*  
682 *Article 4 of the Act.*

683 *"Expense lease" means an operating lease of real property under the control of another entity to the*  
684 *University.*

685 *"Income lease" means an operating lease of real property under the control of the University to*  
686 *another entity.*

687 *"Lease" means any type of lease involving real property.*

688 *"Operating lease" means any lease involving real property, or improvements thereon, that is not a*  
689 *capital lease.*

### 690 *III. SCOPE OF POLICY.*

691 *This policy provides guidance for the implementation of all University leases.*

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

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

### 701 *V. REQUIREMENTS FOR LEASES.*

#### 702 *A. Factors to Be Considered When Entering into Leases.*

703 *All leases shall be for a purpose consistent with the mission of the University. The decision to enter*  
704 *into a lease shall be further based upon cost, demonstrated need, compliance with this policy,*  
705 *consideration of all costs of occupancy, and a determination that the use of the property to be leased is*  
706 *necessary and is efficiently planned. Leases shall also conform to the space planning procedures that*  
707 *may be adopted by the President of the University, acting through the Senior Vice President of*  
708 *Administration and Finance or his designee, to ensure that the plan for the space to be leased is*  
709 *consistent with the purpose for which the space is intended.*

#### 710 *B. Competition to Be Sought to Maximum Practicable Degree.*

711 *Competition shall be sought to the maximum practicable degree for all leases. The President of the*  
712 *University, acting through the Senior Vice President of Administration and Finance or his designee, is*  
713 *authorized to ensure that leases are procured through competition to the maximum degree practicable*  
714 *and to determine when, under guidelines that may be developed and adopted by the President of the*  
715 *University, acting through the Senior Vice President of Administration and Finance or his designee, it is*  
716 *impractical to procure leases through competition.*

#### 717 *C. Approval of Form of Lease Required.*

718 *The form of leases entered into by the University shall be approved by the University's legal counsel.*

#### 719 *D. Execution of Leases.*

720 *All leases entered into by the University shall be executed only by those University officers or*  
721 *persons authorized by the President of the University or as may subsequently be authorized by the*  
722 *board of visitors, and subject to any such limits or conditions as may be prescribed in the delegation of*  
723 *authority. Subject to the University's Policy Governing Capital Projects (Exhibit A) adopted by the*  
724 *board as part of the management agreement between the Commonwealth and the University, no other*  
725 *University approval shall be required for leases or leasing, nor state approval required except in the*  
726 *case of leases of real property as may be governed by general state law in accordance with*  
727 *§§ 23.1-1016 and 23.1-1028 of the Act.*

#### 728 *E. Capital Leases.*

729 *The board of visitors shall authorize the initiation of capital leases pursuant to the authorization*  
730 *process included in the Policy Governing Capital Projects (Exhibit A) adopted by the board as part of*  
731 *the management agreement between the Commonwealth and the University.*

#### 732 *F. Compliance with Applicable Law.*

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

#### 735 *G. Certification of Occupancy.*

736 All real property covered by an expense lease or leased by the University under a capital lease shall  
737 be certified for occupancy by the appropriate public body or building official.

738 EXHIBIT C

739  
740 MANAGEMENT AGREEMENT  
741 BETWEEN  
742 THE COMMONWEALTH OF VIRGINIA  
743 AND  
744 JAMES MADISON UNIVERSITY  
745 PURSUANT TO  
746 THE RESTRUCTURED HIGHER EDUCATION  
747 FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
748  
749 POLICY GOVERNING  
750 INFORMATION TECHNOLOGY  
751  
752 THE RECTOR AND BOARD OF VISITORS  
753 OF JAMES MADISON UNIVERSITY  
754 POLICY GOVERNING INFORMATION TECHNOLOGY

755 I. PREAMBLE.

756 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter  
757 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia, provides in § 23.1-1018, inter alia, that  
758 public institutions of higher education in the Commonwealth of Virginia that have entered into a  
759 management agreement with the Commonwealth "may be exempt from the provisions governing the  
760 Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the  
761 provisions governing the Information Technology Advisory Council, Article 35 (§ 2.2-2699.5 et seq.) of  
762 Chapter 26 of Title 2.2, if the governing board of such covered institution adopts and the covered  
763 institution complies with" policies that govern the exempted provisions. This policy shall become  
764 effective upon the effective date of a management agreement between the Commonwealth and the  
765 University authorized in accord with the Act and which incorporates this policy.

766 The board of visitors of the University is authorized to adopt this policy pursuant to § 23.1-1018 of  
767 the Act.

768 II. DEFINITIONS.

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

771 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
772 Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.

773 "Board of visitors" or "board" means the rector and board of visitors of the University.

774 "Information technology" or "IT" has the same meaning as set forth in § 2.2-2006 of the Code of  
775 Virginia as it currently exists and from time to time may be amended.

776 "Major information technology project" or "major IT project" has the same meaning as set forth in  
777 § 2.2-2006 of the Code of Virginia as it currently exists and from time to time may be amended.

778 "Policy" means this Information Technology Policy adopted by the board of visitors.

779 "State Chief Information Officer" or "State CIO" means the Chief Information Officer of the  
780 Commonwealth of Virginia. These terms shall include, where appropriate and/or required by law, the  
781 Virginia Information Technologies Agency.

782 "University" means James Madison University.

783 III. SCOPE OF POLICY.

784 This policy is intended to cover and implement the authority that the University will exercise under  
785 Article 4 of the Act. This policy is not intended to affect any other powers and authorities granted to the  
786 University pursuant to the general appropriation act and the Code of Virginia, including other  
787 provisions of the Act or the University's enabling statutes, as that term is defined in § 23.1-1000 of the  
788 Act.

789 This policy shall govern the University's information technology strategic planning, expenditure  
790 reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and  
791 audits conducted within, by, or on behalf of the University. Upon the effective date of this management  
792 agreement between the Commonwealth and the University, therefore, the University shall be exempt  
793 from the provisions of the Code of Virginia governing the Virginia Information Technologies Agency,  
794 Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 of the Code of Virginia, and the provisions governing the  
795 Information Technology Advisory Council, Article 35 (§ 2.2-2699.5 et seq.) of Chapter 26 of Title 2.2 of  
796 the Code of Virginia, that otherwise would govern the University's information technology strategic

797 *planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing*  
798 *operations, security, and audits conducted within, by, or on behalf of the University, provided, however,*  
799 *that the University still shall be subject to those provisions governing the Virginia Information*  
800 *Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 of the Code of Virginia, and the*  
801 *provisions governing the Information Technology Advisory Council, Article 35 (§ 2.2-2699.5 et seq.) of*  
802 *Chapter 26 of Title 2.2 of the Code of Virginia, that are applicable to public institutions of higher*  
803 *education of the Commonwealth and that do not govern information technology strategic planning,*  
804 *expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations,*  
805 *security, and audits within, by, or on behalf of the University.*

806 *The procurement of information technology and telecommunications goods and services, including*  
807 *automated data processing hardware and software, shall be governed by the Policy Governing the*  
808 *Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials*  
809 *(Exhibit D) approved by the board, and the Rules Governing Procurement of Goods, Services,*  
810 *Insurance, and Construction that are incorporated in and attached to such policy.*

#### 811 *IV. GENERAL PROVISIONS.*

##### 812 *A. Board of Visitors Accountability and Delegation of Authority.*

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

##### 821 *B. Strategic Planning.*

822 *The President of the University, acting through the Senior Vice President of Administration and*  
823 *Finance or his designee, shall be responsible for overall IT strategic planning at the University, which*  
824 *shall be linked to and in support of the University's overall strategic plan.*

825 *At least 45 days prior to the beginning of each fiscal year, the President of the University, acting*  
826 *through the Senior Vice President of Administration and Finance or his designee, shall make available*  
827 *the University's IT strategic plan covering the next fiscal year to the State CIO for his review and*  
828 *comment with regard to the consistency of the University's plan with the intent of the currently*  
829 *published overall six-year IT strategic plan for the Commonwealth developed by the State CIO pursuant*  
830 *to subdivision A 3 of § 2.2-2007.1 of the Code of Virginia, and into which the University's plan is to be*  
831 *incorporated.*

##### 832 *C. Expenditure Reporting and Budgeting.*

833 *The President of the University, acting through the Senior Vice President of Administration and*  
834 *Finance or his designee, shall approve and be responsible for overall IT budgeting and investments at*  
835 *the University. The University's IT budget and investments shall be linked to and in support of the*  
836 *University's IT strategic plan, and shall be consistent with general University policies, the*  
837 *board-approved annual operating budget, and other board approvals for certain procurements.*

838 *By October 1 of each year, the President of the University, acting through the Senior Vice President*  
839 *of Administration and Finance or his designee, shall make available to the State CIO a report on the*  
840 *previous fiscal year's IT expenditures.*

841 *The University shall be specifically exempt from:*

842 *1. Subdivision B 3 of § 2.2-2007.1 of the Code of Virginia, as it currently exists and from time to*  
843 *time may be amended, relating to review by the State CIO of IT budget requests;*

844 *2. The Virginia Technology Infrastructure Fund, Article 3 (§ 2.2-2022 et seq.) of Chapter 20.1 of*  
845 *Title 2.2 of the Code of Virginia, as it currently exists and from time to time may be amended; and*

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

##### 848 *D. Project Management.*

849 *Pursuant to § 23.1-1018 of the Act, the board shall adopt the project management policies,*  
850 *standards, and guidelines developed by the Commonwealth or those based upon industry best practices*  
851 *for project management as defined by leading IT consulting firms, leading software development firms,*  
852 *or a nationally-recognized project management association, appropriately tailored to the specific*  
853 *circumstances of the University. Copies of the board's policies, standards, and guidelines shall be made*  
854 *available to the State CIO.*

855 *The President of the University, acting through the Senior Vice President of Administration and*  
856 *Finance or his designee, shall oversee the management of all University IT projects. IT projects may*  
857 *include, but are not limited to, upgrades to network infrastructure, provision of technology to support*  
858 *research, database development, implementation of new applications, and development of IT services for*

859 students, faculty, and staff. Day-to-day management of projects shall be the responsibility of appointed  
860 project directors and shall be in accordance with the project management policies, standards, and  
861 guidelines adopted by the board, as amended and revised from time to time.

862 On a quarterly basis, the President of the University, acting through the Senior Vice President of  
863 Administration and Finance or his designee, shall report to the State CIO on the budget, schedule, and  
864 overall status of the University's major IT projects. This requirement shall not apply to research  
865 projects, research initiatives, or instructional programs.

866 The President of the University, acting through the Senior Vice President of Administration and  
867 Finance or his designee, shall be responsible for decisions to substantially alter a project's scope,  
868 budget, or schedule after initial approval.

869 The University shall be specifically exempt from:

870 1. § 2.2-2007.1 of the Code of Virginia, as it currently exists and from time to time may be  
871 amended, relating to additional duties of the State CIO relating to information technology planning and  
872 budgeting;

873 2. Division of Project Management, Article 2 (§ 2.2-2016 et seq.) of Chapter 20.1 of Title 2.2 of the  
874 Code of Virginia, as it currently exists and from time to time may be amended; and

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

877 The State CIO shall continue to have the authority regarding project suspension and termination as  
878 provided in subsection B of § 2.2-2016.1 of the Code of Virginia and shall continue to provide the  
879 University with reasonable notice of, and a reasonable opportunity to correct, any identified problems  
880 before a project is terminated.

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

882 Pursuant to § 23.1-1018 of the Act, the board shall adopt the policies, standards, and guidelines  
883 related to IT infrastructure, architecture, ongoing operations, and security developed by the  
884 Commonwealth or those of nationally recognized associations, appropriately tailored to the specific  
885 circumstances of the University. Copies of the policies shall be made available to the State CIO.

886 The President of the University, acting through the Senior Vice President of Administration and  
887 Finance or his designee, shall be responsible for implementing such policies, standards, and guidelines  
888 adopted by the board, as amended and revised from time to time.

889 For purposes of implementing this policy, the President of the University, acting through the Senior  
890 Vice President of Administration and Finance or his designee, shall appoint an existing University  
891 employee to serve as a liaison between the University and the State CIO.

892 F. Audits.

893 Pursuant to § 23.1-1018 of the Act, the board shall adopt the policies, standards, and guidelines  
894 developed by the Commonwealth or those based upon industry best practices for project auditing as  
895 defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing  
896 association, appropriately tailored to the specific circumstances of the University, which provide for  
897 independent validation and verification of the University's major IT projects. Copies of the policies,  
898 standards, and guidelines, as amended and revised from time to time, shall be made available to the  
899 State CIO.

900 Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure,  
901 architecture, ongoing operations, and security shall also be the responsibility of the University's internal  
902 audit department and the Auditor of Public Accounts.

903 EXHIBIT D

904  
905 MANAGEMENT AGREEMENT  
906 BETWEEN  
907 THE COMMONWEALTH OF VIRGINIA  
908 AND  
909 JAMES MADISON UNIVERSITY  
910 PURSUANT TO  
911 THE RESTRUCTURED HIGHER EDUCATION  
912 FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
913  
914 POLICY GOVERNING  
915 THE PROCUREMENT OF GOODS, SERVICES,  
916 INSURANCE, AND CONSTRUCTION AND  
917 THE DISPOSITION OF SURPLUS MATERIALS  
918  
919 THE RECTOR AND BOARD OF VISITORS

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

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I. PREAMBLE.

A. Article 4 (§ 23.1-1004 et seq.) of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia, provides that the University, 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.

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, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this policy as Attachment I, 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.

This policy is intended to cover the authority that may be granted to the University pursuant to Article 4 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 general appropriation act, and the University's enabling statutes are not affected by this policy.

II. DEFINITIONS.

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

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.

"Agreement" or "management agreement" means an agreement between the Commonwealth of Virginia and the University that enables the University to be governed by Article 4 of the Act.

"Board of visitors" or "board" means the rector and board of visitors of the University.

"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 Article 4 of the Act.

"Effective date" means the effective date of the management agreement.

"Enabling statutes" has the same meaning as provided in § 23.1-1000 of the Act.

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

"Rules" means the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this policy as Attachment I.

"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. "Services" includes 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 James Madison University.

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 University has had decentralization and pilot program autonomy in many procurement functions and activities since the 1994 Appropriation Act. 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, as well as a surplus



982 materials disposition system. Any University electronic procurement system shall integrate or interface  
983 with the Commonwealth's electronic procurement system.

984 This policy shall be effective on the effective date. The policies and procedures adopted by the  
985 President of the University to implement this policy shall continue to be subject to any other policies  
986 adopted by the board of visitors affecting procurements at the University, including policies regarding  
987 the nature and amounts of procurements that may be undertaken without the approval of the board of  
988 visitors or the President of the University.

989 B. Scope and Purpose of University Procurement Policies.

990 This policy shall apply to procurements of goods, services, insurance, and construction. It shall be  
991 the policy of the University that procurements conducted by the University result in the purchase of high  
992 quality goods and services at reasonable prices, and that the University be free, to the maximum extent  
993 permitted by law and this policy, from constraining policies that hinder the ability of the University to  
994 do business in a competitive environment. This policy, together with the rules, shall apply to all  
995 procurements undertaken by the University, regardless of the source of funds.

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

997 The University is committed to developing, maintaining, and sustaining collaboration,  
998 communication, and cooperation with the Commonwealth regarding the matters addressed in this policy,  
999 particularly with the Secretary of Administration, the Department of General Services, and the Virginia  
1000 Information Technologies Agency. Identifying business objectives and goals common to both the  
1001 University and the Commonwealth and the mechanisms by which such objectives and goals may be  
1002 jointly pursued and achieved are among the desired outcomes of such collaboration, communication,  
1003 and cooperation.

1004 D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.

1005 The University is committed to maximizing its internal operational efficiencies, economies of scale  
1006 among institutions of higher education, and the leveraged buying power of the Commonwealth as a  
1007 whole.

1008 Consistent with this commitment, the University:

1009 1. May purchase from and participate in all statewide contracts for goods and services, including  
1010 information technology goods and services, except that the University shall purchase from and  
1011 participate in contracts for communications services and telecommunications facilities entered into by  
1012 the Virginia Information Technologies Agency pursuant to § 2.2-2011 of the Code of Virginia unless an  
1013 exception is provided in the general appropriation act or by other law, and provided that orders not  
1014 placed through statewide contracts shall be processed directly or by integration or interface through the  
1015 Commonwealth's electronic procurement system;

1016 2. Shall use directly or by integration or interface the Commonwealth's electronic procurement  
1017 system; and

1018 3. Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is  
1019 consistent with the Commonwealth's SWAM program.

1020 E. Implementation.

1021 To effect its implementation under the Act, and if the University remains in continued substantial  
1022 compliance with the terms and conditions of this management agreement with the Commonwealth  
1023 pursuant to the requirements of the Act, the University's procurement of goods, services, insurance, and  
1024 construction and the disposition of surplus materials shall be exempt from the Virginia Public  
1025 Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia, except §  
1026 2.2-4342 and §§ 2.2-4367 through 2.2-4377 of such chapter; the oversight of the Virginia Information  
1027 Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 of the Code of Virginia; the state  
1028 agency requirements regarding disposition of surplus materials and distribution of proceeds from the  
1029 sale or recycling of surplus materials in §§ 2.2-1124 and 2.2-1125 of the Code of Virginia; the  
1030 requirement to purchase from the Department for the Blind and Vision Impaired pursuant to § 2.2-1117  
1031 of the Code of Virginia; and any other state statutes, rules, regulations, or requirements relating to the  
1032 procurement of goods, services, insurance, and construction, including but not limited to Article 3  
1033 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the duties,  
1034 responsibilities, and authority of the Division of Purchases and Supply of the Virginia Department of  
1035 General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia,  
1036 regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia  
1037 Department of General Services of contracts for the construction of University capital projects and  
1038 construction-related professional services as set forth in § 2.2-1132 of such article.

1039 V. UNIVERSITY PROCUREMENT POLICIES.

1040 A. General Competitive Principles.

1041 In connection with University procurements and the processes leading to award of contracts for  
1042 goods, services, insurance, and construction, the University is committed to:

- 1043 1. Seeking competition to the maximum practical degree, taking into account the size of the  
 1044 anticipated procurement, the term of the resulting contract, and the likely extent of competition;
- 1045 2. Conducting all procurements in an open, fair, and impartial manner and avoiding any impropriety  
 1046 or the appearance of any impropriety;
- 1047 3. Making procurement rules clear in advance of any competition;
- 1048 4. Providing access to the University's business to all qualified vendors, firms, and contractors, with  
 1049 no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to  
 1050 engage in cooperative procurements and to meet special needs of the University;
- 1051 5. Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular  
 1052 vendor; and
- 1053 6. Providing for the free exchange of information between the University, vendors, firms, or  
 1054 contractors concerning the goods or services sought and offered while preserving the confidentiality of  
 1055 proprietary information.
- 1056 B. Access to Records.
- 1057 Procurement records shall be available to citizens or to interested persons, firms, or corporations in  
 1058 accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et  
 1059 seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to  
 1060 subdivisions 7 and 12 of § 2.2-3705.1, subdivision 4 of § 2.2-3705.4, or other applicable exemptions of  
 1061 the Virginia Freedom of Information Act, and § 2.2-4342 of the Virginia Public Procurement Act,  
 1062 Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia.
- 1063 C. Cooperative Procurements and Alliances.
- 1064 In circumstances where the University determines and documents that statewide contracts for goods  
 1065 and services, including information technology and telecommunications goods and services, do not  
 1066 provide goods and services to the University that meet its business goals and objectives, the University  
 1067 is authorized to participate in cooperative procurements with other public or private organizations or  
 1068 entities, including other educational institutions, public-private partnerships, public bodies, charitable  
 1069 organizations, health care provider alliances, and purchasing organizations, so long as the resulting  
 1070 contracts are procured competitively pursuant to subsections A through J of § 5 of the rules and the  
 1071 purposes of this policy are furthered. In the event the University engages in a cooperative contract with  
 1072 a private organization or public-private partnership and the contract was not competitively procured  
 1073 pursuant to subsections A through J of § 5 of the rules, use of the contract by other state agencies,  
 1074 institutions, and public bodies shall be prohibited. Notwithstanding all of the provisions of this  
 1075 subsection above, use of cooperative contracts shall conform to the business requirements of the  
 1076 Commonwealth's electronic procurement system, including the requirement for payment of applicable  
 1077 fees. By October 1 of each year, the President of the University, acting through the Senior Vice  
 1078 President of Administration and Finance or his designee, shall make available to the Secretary of  
 1079 Administration, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts  
 1080 a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.
- 1081 D. Training; Ethics in Contracting.
- 1082 The President of the University, acting through the Senior Vice President of Administration and  
 1083 Finance or his designee, shall take all necessary and reasonable steps to assure (i) that all University  
 1084 officials responsible for and engaged in procurements authorized by the Act and this policy are  
 1085 knowledgeable regarding the requirements of the Act, this policy, and the Ethics in Public Contracting  
 1086 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title  
 1087 2.2 of the Code of Virginia, (ii) that only officials authorized by this policy and any procedures adopted  
 1088 by the President of the University to implement this policy are responsible for and engaged in such  
 1089 procurements, and (iii) that compliance with the Act and this policy are achieved.
- 1090 The University shall maintain an ongoing program to provide professional development opportunities  
 1091 to its buying staff and to provide methods training to internal staff who are engaged in placing  
 1092 decentralized small purchase transactions.
- 1093 E. Ethics and University Procurements.
- 1094 In implementing the authority conferred by this policy, the personnel administering any procurement  
 1095 shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting  
 1096 provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title  
 1097 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31  
 1098 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia, and the Virginia Governmental Frauds Act,  
 1099 Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2 of the Code of Virginia.
- 1100 VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.
- 1101 The policy and procedures for disposal for surplus materials shall provide for the sale,  
 1102 environmentally appropriate disposal, or recycling of surplus materials by the University and the  
 1103 retention of the resulting proceeds by the University.
- 1104 VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND

1105 PROCEDURES.

1106 A. The President of the University, acting through the Senior Vice President of Administration and  
1107 Finance or his designee, shall adopt one or more comprehensive sets of specific procurement policies  
1108 and procedures for the University, which, in addition to the rules, implement applicable provisions of  
1109 law and this policy. The University procurements shall be carried out in accordance with this policy, the  
1110 rules, and any implementing policies and procedures adopted by the University. The implementing  
1111 policies and procedures adopted by the University (i) shall include the delegation of procurement  
1112 authority by the board to appropriate University officials who shall oversee University procurements of  
1113 goods, services, insurance, and construction, including a grant of authority to such officials to engage in  
1114 further delegation of authority as the President of the University deems appropriate, and (ii) shall  
1115 remain consistent with the competitive principles set forth in Section V of this policy.

1116 B. Any implementing policies and procedures adopted pursuant to subsection A and the rules shall  
1117 become effective on the effective date and, as of such date, shall be applicable to all procurements  
1118 undertaken by the University on behalf of the University for goods, services, insurance, and  
1119 construction. This policy, the rules, and any implementing policies and procedures adopted by the  
1120 University shall not affect existing contracts already in effect.

1121 C. The rules and the University implementing policies and procedures for all University  
1122 procurements of goods, services, insurance, and construction and the disposition of surplus property  
1123 shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions  
1124 of Higher Education and their Vendors in their form as of the effective date and as amended or  
1125 changed in the future, and with the University procedures specific to the acquisition of goods and  
1126 services. The rules and the University implementing policies and procedures shall implement a system of  
1127 competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including  
1128 professional services, as defined in the rules, insurance, and construction.

1129 VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.

1130 A. Protests, Appeals, and Debarment.

1131 The rules and the University implementing policies and procedures for procurements other than  
1132 capital outlay shall include a process or processes for an administrative appeal by vendors, firms, or  
1133 contractors. Protests and appeals may challenge determinations of vendor, firm, or contractor  
1134 non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are  
1135 filed within the timeframes specified by the rules. Remedies available shall be limited to reversal of the  
1136 action challenged or, where a contract already being performed is declared void, compensation for the  
1137 cost of performance up to the time of such declaration. The rules and the University implementing  
1138 policies and procedures also may establish the basis and process for debarment of any vendor, firm, or  
1139 contractor.

1140 B. Prompt Payment of Contractors and Subcontractors.

1141 The rules and the University implementing policies and procedures shall include provisions related to  
1142 prompt payment of outstanding invoices, which shall include payment of interest on properly-presented  
1143 invoices outstanding more than seven days beyond the payment date, at a rate no higher than the lowest  
1144 prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date  
1145 shall be the later of 30 days from the date of the receipt of goods or invoice, or the date established by  
1146 the contract. All contracts also shall require prompt payment of subcontractors by the general  
1147 contractor, upon receipt of payment by the University.

1148 C. Types of Procurements.

1149 The rules and the University implementing policies and procedures shall implement a system of  
1150 competitive negotiation for professional services, as defined in the rules, and shall implement purchasing  
1151 procedures developed to maximize competition given the size and duration of the contract and the needs  
1152 of the University. Such policies and procedures may include special provisions for procurements, such  
1153 as emergency procurements, sole source procurements, brand name procurements, small purchases,  
1154 procurements in which only one qualified vendor responds, and others.

1155 D. Approval and Public Notice of Procurements.

1156 The rules and the University implementing policies and procedures shall provide for approval of  
1157 solicitation documents by an authorized individual and for reasonable public notice of procurements,  
1158 given the size and nature of the need and the applicability of any exemption in the Virginia Freedom of  
1159 Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia.

1160 E. Administration of Contracts.

1161 The rules and the University implementing policies and procedures shall contain provisions related  
1162 to the administration of contracts, including contract claims, modifications, extensions, and assignments.

1163 F. Nondiscrimination.

1164 The rules and the University implementing policies and procedures shall provide for a  
1165 nondiscriminatory procurement process that prohibits discrimination because of the race, religion, color,

1166 sex, or national origin of the bidder or offeror in the solicitation and award of contracts and shall  
 1167 include appropriate provisions to effectuate fair and reasonable consideration of women-owned,  
 1168 minority-owned, and small businesses and to promote and encourage a diversity of suppliers.

1169 ATTACHMENT 1

1170 Rules Governing Procurement of Goods, Services, Insurance, and Construction  
 1171 by a Public Institution of Higher Education of the Commonwealth of Virginia  
 1172 Governed by Article 4 of the

1173 Restructured Higher Education Financial and Administrative Operations Act,  
 1174 Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.

1175 In accordance with the provisions of the Restructured Higher Education Financial and  
 1176 Administrative Operations Act (the Act), Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of  
 1177 Virginia, and in particular § 23.1-1017 of the Act, the governing body of a public institution of higher  
 1178 education of the Commonwealth of Virginia that has entered into a management agreement with the  
 1179 Commonwealth pursuant to Article 4 of the Act has adopted the following rules to govern the  
 1180 procurement of goods, services, insurance, and construction by the Institution:

1181 § 1. Purpose. -

1182 The purpose of these rules is to enunciate the public policies pertaining to procurement of goods,  
 1183 services, insurance, and construction by the Institution from nongovernmental sources, to include  
 1184 governmental procurement that may or may not result in monetary consideration for either party. These  
 1185 rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the  
 1186 Institution, the contractor, or some third party is providing the consideration.

1187 § 2. Scope of procurement authority. -

1188 Subject to these rules, and the Institution's continued substantial compliance with the terms and  
 1189 conditions of its management agreement with the Commonwealth pursuant to the  
 1190 requirements—particularly Article 4—of the Act, the Institution shall have and shall be authorized to  
 1191 have and exercise all of the authority relating to procurement of goods, services, insurance, and  
 1192 construction, including but not limited to capital outlay-related procurement and information  
 1193 technology-related procurement, that Institutions are authorized to exercise pursuant to Article 4 of the  
 1194 Act.

1195 § 3. Competition is the priority. -

1196 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that  
 1197 all procurement procedures be conducted in an open, fair, and impartial manner with avoidance of any  
 1198 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's  
 1199 business, and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing  
 1200 body of the Institution that competition be sought to the maximum feasible degree, that procurement  
 1201 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad  
 1202 flexibility in fashioning details of such competition, that the rules governing contract awards be made  
 1203 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing  
 1204 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely  
 1205 exchange information concerning what is sought to be procured and what is offered. The Institution may  
 1206 consider best value concepts when procuring goods and nonprofessional services but not construction or  
 1207 professional services. Professional services will be procured using a qualification-based selection  
 1208 process. The criteria, factors, and basis for consideration of best value and the process for the  
 1209 consideration of best value shall be as stated in the procurement solicitation.

1210 § 4. Definitions. -

1211 As used in these rules:

1212 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
 1213 Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.

1214 "Affiliate" means an individual or business that controls, is controlled by, or is under common  
 1215 control with another individual or business. A person controls an entity if the person owns, directly or  
 1216 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition,  
 1217 "voting security" means a security that (i) confers upon the holder the right to vote for the election of  
 1218 members of the board of directors or similar governing body of the business or (ii) is convertible into,  
 1219 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general  
 1220 partnership interest shall be deemed to be a voting security.

1221 "Best value" means the overall combination of quality, price, and various elements of required  
 1222 services that in total are optimal relative to the Institution's needs, as predetermined in the solicitation.

1223 "Business" means any type of corporation, partnership, limited liability company, association, or sole  
 1224 proprietorship operated for profit.

1225 "Competitive negotiation" means a method of contractor selection that includes the following  
 1226 elements:

1227 1. Issuance of a written request for proposal indicating in general terms that which is sought to be

1228 *procured, specifying the factors that will be used in evaluating the proposal and containing or*  
 1229 *incorporating by reference the other applicable contractual terms and conditions, including any unique*  
 1230 *capabilities or qualifications that will be required of the contractor.*

1231 *2. Public notice of the request for proposal at least 10 days prior to the date set for receipt of*  
 1232 *proposals by publication in a newspaper or newspapers of general circulation in the area in which the*  
 1233 *contract is to be performed so as to provide reasonable notice to the maximum number of offerors that*  
 1234 *can be reasonably anticipated to submit proposals in response to the particular request. Public notice*  
 1235 *also shall be published on the Department of General Services' central electronic procurement website*  
 1236 *and may be published on other appropriate websites. In addition, proposals may be solicited directly*  
 1237 *from potential contractors.*

1238 *3. a. Procurement of professional services. The procurement of professional services for capital*  
 1239 *projects shall be conducted using a qualification-based selection process. The Institution shall engage in*  
 1240 *individual discussions with two or more offerors deemed fully qualified, responsible, and suitable on the*  
 1241 *basis of initial responses and with emphasis on professional competence, to provide the required*  
 1242 *services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to*  
 1243 *elaborate on their qualifications and performance data or staff expertise pertinent to the proposed*  
 1244 *project, as well as alternative concepts. The request for proposal shall not, however, request that*  
 1245 *offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may*  
 1246 *discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and*  
 1247 *where appropriate, nonbinding estimates of price for services. Proprietary information from competing*  
 1248 *offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined*  
 1249 *in this subdivision, on the basis of evaluation factors published in the request for proposal and all*  
 1250 *information developed in the selection process to this point, the Institution shall select in the order of*  
 1251 *preference two or more offerors whose professional qualifications and proposed services are deemed*  
 1252 *most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a*  
 1253 *contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair*  
 1254 *and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked*  
 1255 *first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on*  
 1256 *until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine*  
 1257 *in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly*  
 1258 *more highly qualified and suitable than the others under consideration, a contract may be negotiated*  
 1259 *and awarded to that offeror.*

1260 *A contract for architectural or professional engineering services relating to construction projects may*  
 1261 *be negotiated by the Institution for multiple projects, provided (i) the projects require similar experience*  
 1262 *and expertise and (ii) the nature of the projects is clearly identified in the request for proposal. Under*  
 1263 *such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of*  
 1264 *each project performed, (b) the sum of all projects performed in one contract term shall be as set in the*  
 1265 *request for proposal, and (c) the project fee of any single project shall not exceed the term limit as set*  
 1266 *in the request for proposal. Any unused amounts from any contract term may be carried forward.*  
 1267 *Competitive negotiations for such contracts may result in awards to more than one offeror provided the*  
 1268 *request for proposal stated the potential for a multivendor award.*

1269 *Multiphase professional services contracts satisfactory and advantageous to the Institution for*  
 1270 *environmental, location, design, and inspection work regarding construction of infrastructure projects*  
 1271 *may be negotiated and awarded based on qualifications at a fair and reasonable price for the first*  
 1272 *phase only, when completion of the earlier phases is necessary to provide information critical to the*  
 1273 *negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such*  
 1274 *contract, the Institution shall state the anticipated intended total scope of the project and determine in*  
 1275 *writing that the nature of the work is such that the best interests of such Institution require awarding*  
 1276 *the contract.*

1277 *b. Procurement of other than professional services. Selection shall be made of two or more offerors*  
 1278 *deemed to be fully qualified and best suited among those submitting proposals, on the basis of the*  
 1279 *factors involved in the request for proposal, including price if so stated in the request for proposal.*  
 1280 *Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered,*  
 1281 *but need not be the sole determining factor. After negotiations have been conducted with each offeror so*  
 1282 *selected, the Institution shall select the offeror that, in its opinion, has made the best proposal, and shall*  
 1283 *award the contract to that offeror. When the terms and conditions of multiple awards are so provided in*  
 1284 *the request for proposal, awards may be made to more than one offeror. Should the Institution*  
 1285 *determine in writing and in its sole discretion that only one offeror has made the best proposal, a*  
 1286 *contract may be negotiated and awarded to that offeror.*

1287 *"Competitive sealed bidding" is a method of contractor selection, other than for professional*  
 1288 *services, that includes the following elements:*

- 1289 1. Issuance of a written invitation to bid containing or incorporating by reference the specifications  
1290 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided  
1291 for prequalification of bidders, the invitation to bid shall include a statement of any requisite  
1292 qualifications of potential contractors. When it is impractical to prepare initially a purchase description  
1293 to support an award based on prices, an invitation to bid may be issued requesting the submission of  
1294 unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been  
1295 qualified under the criteria set forth in the first solicitation.
- 1296 2. Public notice of the invitation to bid at least 10 days prior to the date set for receipt of bids by  
1297 publication on the Department of General Services' central electronic procurement website. Public  
1298 notice also may be published in a newspaper of general circulation or on other appropriate websites, or  
1299 both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations  
1300 shall include businesses selected from a list made available by the Department of Minority Business  
1301 Enterprise.
- 1302 3. Public opening and announcement of all bids received.
- 1303 4. Evaluation of bids based upon the requirements set forth in the invitation, that may include  
1304 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria  
1305 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, that  
1306 are helpful in determining acceptability.
- 1307 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple  
1308 awards are so provided in the invitation to bid, awards may be made to more than one bidder.
- 1309 "Construction" means building, altering, repairing, improving, or demolishing any structure, building,  
1310 or highway, and any draining, dredging, excavation, grading, or similar work upon real property.
- 1311 "Construction management contract" means a contract in which a party is retained by the owner to  
1312 coordinate and administer contracts for construction services for the benefit of the owner, and may also  
1313 include, if provided in the contract, the furnishing of construction services to the owner.
- 1314 "Covered institution" or "Institution" means, on and after the effective date of the initial management  
1315 agreement with the Commonwealth of Virginia, a public institution of higher education of the  
1316 Commonwealth that has entered into a management agreement with the Commonwealth to be governed  
1317 by the provisions of Article 4 of the Act.
- 1318 "Design-build contract" means a contract between the Institution and another party in which the  
1319 party contracting with the Institution agrees to both design and build the structure, roadway, or other  
1320 item specified in the contract.
- 1321 "Goods" means all material, equipment, supplies, and printing, including information technology and  
1322 telecommunications goods such as automated data processing hardware and software.
- 1323 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of  
1324 the invitation to bid, or the request for proposal, that does not affect the price, quality, quantity, or  
1325 delivery schedule for the goods, services, or construction being procured.
- 1326 "Multiphase professional services contract" means a contract for the providing of professional  
1327 services where the total scope of work of the second or subsequent phase of the contract cannot be  
1328 specified without the results of the first or prior phase of the contract.
- 1329 "Nonprofessional services" means any services not specifically identified as professional services in  
1330 the definition of professional services and includes small construction projects valued not over \$1  
1331 million, provided that subdivision 3 a of the definition of "competitive negotiation" in this section shall  
1332 still apply to professional services for such small construction projects.
- 1333 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these rules, means a person who,  
1334 at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the  
1335 sale or lease of goods, or the sale of services, insurance, or construction, of the type to be procured  
1336 under the contract, and who at such time is eligible and qualified in all respects to perform that  
1337 contract, and who would have been eligible and qualified to submit a bid or proposal had the contract  
1338 been procured through competitive sealed bidding or competitive negotiation.
- 1339 "Professional services" means work performed by an independent contractor within the scope of the  
1340 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,  
1341 dentistry, medicine, optometry, pharmacy, or professional engineering.
- 1342 "Public body" means any legislative, executive, or judicial body, agency, office, department,  
1343 authority, post, commission, committee, institution, board, or political subdivision created by law to  
1344 exercise some sovereign power or to perform some governmental duty, and empowered by law to  
1345 undertake the activities described in these rules.
- 1346 "Public contract" means an agreement between the Institution and a nongovernmental source that is  
1347 enforceable in a court of law.
- 1348 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform  
1349 fully the contract requirements and the moral and business integrity and reliability that will assure good  
1350 faith performance, and who has been prequalified, if required.

1351 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects  
1352 to the invitation to bid.

1353 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction  
1354 adopted by the governing body of the covered institution.

1355 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
1356 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
1357 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
1358 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
1359 established for bid opening.

1360 "Services" means any work performed by an independent contractor wherein the service rendered  
1361 does not consist primarily of acquisition of equipment or materials, or the rental of equipment,  
1362 materials, and supplies.

1363 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working  
1364 environment and individual goals that utilizes work experience and related services for assisting the  
1365 handicapped person to progress toward normal living and a productive vocational status.

1366 § 5. Methods of procurement. -

1367 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for  
1368 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding,  
1369 or competitive negotiation as provided in this section, unless otherwise authorized by law.

1370 B. Professional services shall be procured by competitive negotiation. Qualification-based selection  
1371 shall be used for design services.

1372 C. Goods, services, or insurance may be procured by competitive negotiation.

1373 D. Construction may be procured only by competitive sealed bidding, except that competitive  
1374 negotiation may be used in the following instances upon a determination made in advance by the  
1375 Institution and set forth in writing that competitive sealed bidding is either not practicable or not  
1376 fiscally advantageous to the public, which writing shall document the basis for this determination:

1377 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

1378 2. By the Institution for the construction, alteration, repair, renovation, or demolition of buildings; or

1379 3. By the Institution for the construction of highways and any draining, dredging, excavation,  
1380 grading, or similar work upon real property.

1381 E. Upon a determination in writing that there is only one source practicably available for that which  
1382 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed  
1383 bidding or competitive negotiation. The writing shall document the basis for this determination. The  
1384 Institution shall issue a written notice stating that only one source was determined to be practicably  
1385 available, and identifying that which is being procured, the contractor selected, and the date on which  
1386 the contract was or will be awarded. This notice shall be posted in a designated public area, which may  
1387 be the Department of General Services' website for the Commonwealth's central electronic procurement  
1388 system, or published in a newspaper of general circulation on the day the Institution awards or  
1389 announces its decision to award the contract, whichever occurs first. Public notice shall also be  
1390 published on the Department of General Services' website for the Commonwealth's central electronic  
1391 procurement system and may be published on other appropriate websites.

1392 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
1393 competitive negotiation; however, such procurement shall be made with such competition as is  
1394 practicable under the circumstances. A written determination of the basis for the emergency and for the  
1395 selection of the particular contractor shall be included in the contract file. The Institution shall issue a  
1396 written notice stating that the contract is being awarded on an emergency basis, and identifying that  
1397 which is being procured, the contractor selected, and the date on which the contract was or will be  
1398 awarded. This notice shall be posted in a designated public area, which may be the Department of  
1399 General Services' website for the Commonwealth's central electronic procurement system, or published  
1400 in a newspaper of general circulation on the day the Institution awards or announces its decision to  
1401 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may  
1402 also be published on the Department of General Services' website for the Commonwealth's central  
1403 electronic procurement system and other appropriate websites.

1404 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive  
1405 sealed bids or competitive negotiation for single or term contracts for goods and services other than  
1406 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;  
1407 however, such small purchase procedures shall provide for competition wherever practicable.

1408 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive  
1409 negotiation for single or term contracts for professional services if the aggregate or the sum of all  
1410 phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for  
1411 competition wherever practicable.

1412 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase  
1413 of goods, products, or commodities from a public auction sale is in the best interests of the public, such  
1414 items may be purchased at the auction, including online public auctions. The writing shall document the  
1415 basis for this determination.

1416 J. The purchase of goods or nonprofessional services, but not construction or professional services,  
1417 may be made by reverse auctioning.

1418 § 6. Cooperative procurement. -

1419 A. In circumstances where the Institution determines and documents that statewide contracts for  
1420 goods and services, including information technology and telecommunications goods and services, do  
1421 not provide goods and services to the Institution that meet its business goals and objectives, the  
1422 Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement  
1423 arrangement on behalf of or in conjunction with public bodies, public or private health or educational  
1424 institutions, other public or private organizations or entities, including public-private partnerships,  
1425 charitable organizations, health care provider alliances, or purchasing organizations or entities, or with  
1426 public agencies or institutions or group purchasing organizations of the several states, territories of the  
1427 United States, or the District of Columbia, for the purpose of combining requirements to effect cost  
1428 savings or reduce administrative expense in any acquisition of goods and services, other than  
1429 professional services. The Institution may purchase from any authority, department, agency, institution,  
1430 city, county, town, or other political subdivision of the Commonwealth's contract even if it did not  
1431 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to  
1432 bid specified that the procurement was being conducted on behalf of other public bodies. In such  
1433 instances, deviation from the procurement procedures set forth in these rules and the administrative  
1434 policies and procedures established to implement these rules shall be permitted. Notwithstanding all of  
1435 the provisions of this section above, use of cooperative contracts shall conform to the business  
1436 requirements of the Commonwealth's electronic procurement system, including the requirement for  
1437 payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any  
1438 administrative fee that will allow for participation in any such arrangement.

1439 B. In circumstances where statewide contracts for goods and services, including information  
1440 technology and telecommunications goods and services, do not provide goods and services to meet the  
1441 Institution's business goals and objectives, and as authorized by the United States Congress and  
1442 consistent with applicable federal regulations, and provided the terms of the contract permit such  
1443 purchases:

1444 1. The Institution may purchase goods and nonprofessional services from a U.S. General Services  
1445 Administration contract or a contract awarded by any other agency of the United States government;  
1446 and

1447 2. The Institution may purchase telecommunications and information technology goods and  
1448 nonprofessional services from a United States General Services Administration contract or a contract  
1449 awarded by any other agency of the United States government.

1450 § 7. Design-build or construction management contracts authorized. -

1451 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed  
1452 price design-build basis or construction management basis in accordance with the provisions of this  
1453 section.

1454 B. Procurement of construction by the design-build or construction management method shall be a  
1455 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their  
1456 qualifications. Based upon the information submitted and any other relevant information that the  
1457 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be  
1458 selected by the Commonwealth and requested to submit proposals.

1459 § 8. Modification of the contract. -

1460 A. A contract awarded by the Institution may include provisions for modification of the contract  
1461 during performance, but no fixed-price contract may be increased by more than 25 percent of the  
1462 amount of the contract or \$50,000, whichever is greater, without the advance written approval of the  
1463 President of the Institution or his designee. In no event may the amount of any contract, without  
1464 adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror  
1465 from the consequences of an error in its bid or offer.

1466 B. The Institution may extend the term of an existing contract for services to allow completion of any  
1467 work undertaken but not completed during the original term of the contract.

1468 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract  
1469 modifications.

1470 § 9. Discrimination prohibited; participation of small, women-owned, and minority-owned business. -

1471 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
1472 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis  
1473 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the



1474 Institution shall include businesses selected from a list made available by the Department of Minority  
1475 Business Enterprise.

1476 B. The Institution shall establish programs consistent with this section to facilitate the participation  
1477 of small businesses and businesses owned by women and minorities in procurement transactions. The  
1478 programs established shall be in writing and shall include cooperation with the Department of Minority  
1479 Business Enterprise, the U.S. Small Business Administration, and other public or private agencies. The  
1480 Institution shall submit annual progress reports on minority business procurement to the Department of  
1481 Minority Business Enterprise.

1482 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
1483 analysis that documents a statistically significant disparity between the availability and utilization of  
1484 women-owned and minority-owned businesses, the Governor is by law authorized and encouraged to  
1485 require the Institution to implement appropriate enhancement or remedial measures consistent with  
1486 prevailing law.

1487 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder  
1488 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination  
1489 that employing ex-offenders on the specific contract is not in its best interest.

1490 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

1491 The Institution shall include in every contract of more than \$10,000 the following provisions:

1492 1. During the performance of this contract, the contractor agrees as follows:

1493 a. The contractor will not discriminate against any employee or applicant for employment because of  
1494 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating  
1495 to discrimination in employment, except where there is a bona fide occupational qualification reasonably  
1496 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous  
1497 places, available to employees and applicants for employment, notices setting forth the provisions of this  
1498 nondiscrimination clause.

1499 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the  
1500 contractor, will state that such contractor is an equal opportunity employer.

1501 c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or  
1502 regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

1503 2. The contractor will include the provisions of subdivisions 1 a, b, and c in every subcontract or  
1504 purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or  
1505 vendor.

1506 § 11. Drug-free workplace to be maintained by contractor; required contract provisions.

1507 The Institution shall include in every contract over \$10,000 the following provisions:

1508 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace  
1509 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for  
1510 employment, a statement notifying employees that the unlawful manufacture, sale, distribution,  
1511 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's  
1512 workplace and specifying the actions that will be taken against employees for violations of such  
1513 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the  
1514 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the  
1515 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be  
1516 binding upon each subcontractor or vendor.

1517 For the purposes of this section, "drug-free workplace" means a site for the performance of work  
1518 done in connection with a specific contract awarded to a contractor in accordance with these rules, the  
1519 employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,  
1520 dispensation, possession, or use of any controlled substance or marijuana during the performance of the  
1521 contract.

1522 § 12. Use of brand names. -

1523 Unless otherwise provided in the invitation to bid, the name of a certain brand, make, or  
1524 manufacturer shall not restrict bidders to the specific brand, make, or manufacturer named and shall be  
1525 deemed to convey the general style, type, character, and quality of the article desired. Any article that  
1526 the Institution in its sole discretion determines to be the equal of that specified, considering quality,  
1527 workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

1528 § 13. Comments concerning specifications. -

1529 The Institution shall establish procedures whereby comments concerning specifications or other  
1530 provisions in invitations to bid or requests for proposal can be received and considered prior to the  
1531 time set for receipt of bids or proposals or award of the contract.

1532 § 14. Prequalification generally; prequalification for construction. -

1533 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance,  
1534 or construction and consideration of bids or proposals limited to prequalified contractors. Any

1535 prequalification procedure shall be established in writing and sufficiently in advance of its  
1536 implementation to allow potential contractors a fair opportunity to complete the process.

1537 B. Any prequalification of prospective contractors for construction by the Institution shall be  
1538 pursuant to a prequalification process for construction projects adopted by the Institution. The process  
1539 shall be consistent with the provisions of this section.

1540 The application form used in such process shall set forth the criteria upon which the qualifications  
1541 of prospective contractors will be evaluated. The application form shall request of prospective  
1542 contractors only such information as is appropriate for an objective evaluation of all prospective  
1543 contractors pursuant to such criteria. The form shall allow the prospective contractor seeking  
1544 prequalification to request, by checking the appropriate box, that all information voluntarily submitted  
1545 by the contractor pursuant to this subsection shall be considered a trade secret or proprietary  
1546 information subject to the provisions of subsection D of § 34 of these rules.

1547 In all instances in which the Institution requires prequalification of potential contractors for  
1548 construction projects, advance notice shall be given of the deadline for the submission of  
1549 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set  
1550 for the submission of bids for such construction so as to allow the procedures set forth in this  
1551 subsection to be accomplished.

1552 At least 30 days prior to the date established for submission of bids or proposals under the  
1553 procurement of the contract for which the prequalification applies, the Institution shall advise in writing  
1554 each contractor who submitted an application whether that contractor has been prequalified. In the  
1555 event that a contractor is denied prequalification, the written notification to the contractor shall state  
1556 the reasons for the denial of prequalification and the factual basis of such reasons.

1557 A decision by the Institution denying prequalification under the provisions of this subsection shall be  
1558 final and conclusive unless the contractor appeals the decision as provided in § 54 of these rules.

1559 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the  
1560 following:

1561 1. The contractor does not have sufficient financial ability to perform the contract that would result  
1562 from such procurement. If a bond is required to ensure performance of a contract, evidence that the  
1563 contractor can acquire a surety bond from a corporation included on the United States Treasury list of  
1564 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to  
1565 establish the financial ability of the contractor to perform the contract resulting from such procurement;

1566 2. The contractor does not have appropriate experience to perform the construction project in  
1567 question;

1568 3. The contractor or any officer, director, or owner thereof has had judgments entered against him  
1569 within the past 10 years for the breach of contracts for governmental or nongovernmental construction,  
1570 including, but not limited to, design-build or construction management;

1571 4. The contractor has been in substantial noncompliance with the terms and conditions of prior  
1572 construction contracts with the Institution without good cause. If the Institution has not contracted with  
1573 a contractor in any prior construction contracts, the Institution may deny prequalification if the  
1574 contractor has been in substantial noncompliance with the terms and conditions of comparable  
1575 construction contracts with another public body without good cause. The Institution may not utilize this  
1576 provision to deny prequalification unless the facts underlying such substantial noncompliance were  
1577 documented in writing in the prior construction project file and such information relating thereto given  
1578 to the contractor at that time, with the opportunity to respond;

1579 5. The contractor or any officer, director, owner, project manager, procurement manager, or chief  
1580 financial official thereof has been convicted within the past 10 years of a crime related to governmental  
1581 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6  
1582 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental  
1583 Frauds Act, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2 of the Code of Virginia, (iii)  
1584 Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 of the Code of Virginia, or (iv) any substantially similar  
1585 law of the United States or another state;

1586 6. The contractor or any officer, director, or owner thereof is currently debarred pursuant to an  
1587 established debarment procedure from bidding or contracting by any public body, agency of another  
1588 state, or agency of the federal government; and

1589 7. The contractor failed to provide to the Institution in a timely manner any information requested by  
1590 the Institution relevant to subdivisions 1 through 6 of this subsection.

1591 § 15. Negotiation with lowest responsible bidder. -

1592 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as  
1593 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the  
1594 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds.  
1595 However, the negotiation may be undertaken only under conditions and procedures described in writing  
1596 and approved by the Institution prior to issuance of the invitation to bid and summarized therein.

- 1597 § 16. Cancellation, rejection of bids; waiver of informalities. -  
 1598 A. An invitation to bid, a request for proposal, any other solicitation, or any and all bids or  
 1599 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of  
 1600 the contract file. The Institution shall not cancel or reject an invitation to bid, a request for proposal, or  
 1601 any other solicitation, bid, or proposal pursuant to this section solely to avoid awarding a contract to a  
 1602 particular responsive and responsible bidder or offeror.  
 1603 B. The Institution may waive informalities in bids.  
 1604 § 17. Exclusion of insurance bids prohibited. -  
 1605 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance  
 1606 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be  
 1607 excluded from presenting an insurance bid proposal to the Institution in response to a request for  
 1608 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a  
 1609 prospective insurer pursuant to § 18 of these rules.  
 1610 § 18. Debarment. -  
 1611 Prospective contractors may be debarred from contracting for particular types of supplies, services,  
 1612 insurance, or construction, for specified periods of time. Any debarment procedure shall be established  
 1613 in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a  
 1614 contractor's unsatisfactory performance for the Institution.  
 1615 § 19. Purchase programs for recycled goods; Institution responsibilities. -  
 1616 A. The Institution may implement a purchase program for recycled goods and may coordinate its  
 1617 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and  
 1618 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these rules.  
 1619 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets  
 1620 Development Council, shall advise the Institution concerning the designation of recycled goods.  
 1621 § 20. Preference for Virginia products with recycled content and for Virginia firms. -  
 1622 A. In the case of a tie bid, preference shall be given to goods produced in Virginia or goods,  
 1623 services, or construction provided by Virginia persons, firms, or corporations; otherwise the tie shall be  
 1624 decided by lot.  
 1625 B. Whenever any bidder is a resident of any other state and such state under its laws allows a  
 1626 resident contractor of that state a preference, a like preference may be allowed by the Institution to the  
 1627 lowest responsive and responsible bidder who is a resident of Virginia.  
 1628 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where  
 1629 goods are being offered, and existing price preferences have already been taken into account, preference  
 1630 shall be given to the bidder whose goods contain the greatest amount of recycled content.  
 1631 § 21. Preference for Virginia coal used in the Institution. -  
 1632 In determining the award of any contract for coal to be purchased for use in the Institution with  
 1633 state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest  
 1634 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more  
 1635 than four percent greater than the bid price of the low responsive and responsible bidder offering coal  
 1636 mined elsewhere.  
 1637 § 22. Preference for recycled paper and paper products used by the Institution. -  
 1638 A. In determining the award of any contract for paper and paper products to be purchased for use  
 1639 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable  
 1640 for the purpose intended, so long as the price is not more than 10 percent greater than the price of the  
 1641 low responsive and responsible bidder or offeror offering a product that does not qualify under  
 1642 subsection B.  
 1643 B. For purposes of this section, recycled paper and paper products means any paper or paper  
 1644 products meeting the U.S. Environmental Protection Agency-recommended content standards as defined  
 1645 in 40 C.F.R. Part 247.  
 1646 § 23. Withdrawal of bid due to error. -  
 1647 A. A bidder for a public construction contract, other than a contract for construction or maintenance  
 1648 of public highways, may withdraw his bid from consideration if the price bid was substantially lower  
 1649 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and  
 1650 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an  
 1651 unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material  
 1652 made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission  
 1653 can be clearly shown by objective evidence drawn from inspection of original work papers, documents,  
 1654 and materials used in the preparation of the bid sought to be withdrawn.  
 1655 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from  
 1656 consideration if the price bid would have been substantially lower than the other bids due solely to the  
 1657 clerical mistake, which was an unintentional arithmetic error or an unintentional omission of a quantity

1658 of work, labor, or material made directly in the compilation of a bid that shall be clearly shown by  
 1659 objective evidence drawn from inspection of original work papers, documents, and materials used in the  
 1660 preparation of the bid sought to be withdrawn.

1661 One of the following procedures for withdrawal of a bid shall be selected by the Institution and  
 1662 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to  
 1663 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall  
 1664 submit original work papers with such notice or (ii) the bidder shall submit to the Institution or  
 1665 designated official his original work papers, documents, and materials used in the preparation of the bid  
 1666 within one day after the date fixed for submission of bids. The work papers shall be delivered by the  
 1667 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either  
 1668 instance, the work papers, documents, and materials may be considered as trade secrets or proprietary  
 1669 information subject to the conditions of subsection F of § 34 of these rules. The bids shall be opened  
 1670 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder  
 1671 shall have two hours after the opening of bids within which to claim in writing any mistake as defined  
 1672 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour  
 1673 period has elapsed. The mistake shall be proved only from the original work papers, documents, and  
 1674 materials delivered as required herein.

1675 B. The Institution may establish procedures for the withdrawal of bids for other than construction  
 1676 contracts.

1677 C. No bid shall be withdrawn under this section when the result would be the awarding of the  
 1678 contract on another bid of the same bidder or of another bidder in which the ownership of the  
 1679 withdrawing bidder is more than five percent.

1680 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed  
 1681 to be the low bid.

1682 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or  
 1683 labor to or perform any subcontract or other work agreement for the person or firm to whom the  
 1684 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for  
 1685 which the withdrawn bid was submitted.

1686 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify  
 1687 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the  
 1688 bid price, provided such bidder is a responsible and responsive bidder.

1689 § 24. Contract Pricing Arrangements. -

1690 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other  
 1691 basis that is not prohibited by these rules.

1692 B. Except in case of emergency affecting the public health, safety, or welfare, no public contract  
 1693 shall be awarded on the basis of cost plus a percentage of cost.

1694 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis  
 1695 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in  
 1696 whole or part as a percentage of such claims, shall not be prohibited by this section.

1697 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

1698 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has  
 1699 obtained, and continues to maintain for the duration of the work, workers' compensation coverage  
 1700 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of  
 1701 Virginia and (ii) provides prior to the award of contract, on a form furnished by the Institution,  
 1702 evidence of such coverage.

1703 B. The Department of General Services shall provide the workers' compensation coverage form to  
 1704 the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive  
 1705 the requirements of clause (ii) of subsection A.

1706 C. No subcontractor shall perform any work on a construction project of the Institution unless he  
 1707 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage  
 1708 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of  
 1709 Virginia.

1710 § 26. Retainage on construction contracts. -

1711 A. In any contract issued by the Institution for construction that provides for progress payments in  
 1712 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95  
 1713 percent of the earned sum when payment is due, with no more than five percent being retained to  
 1714 ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

1715 B. Any subcontract for a public project that provides for similar progress payments shall be subject  
 1716 to the provisions of this section.

1717 § 27. Public construction contract provisions barring damages for unreasonable delays declared  
 1718 void. -

1719 A. Any provision contained in any public construction contract of the Institution that purports to

1720 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable  
1721 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the  
1722 extent the delay is caused by acts or omissions of the Institution, its agents, or employees and due to  
1723 causes within their control, shall be void and unenforceable as against public policy.

1724 B. Subsection A shall not be construed to render void any provision of a public construction contract  
1725 awarded by the Institution that:

1726 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the  
1727 contractor or its subcontractors, agents, or employees;

1728 2. Requires notice of any delay by the party claiming the delay;

1729 3. Provides for liquidated damages for delay; or

1730 4. Provides for arbitration or any other procedure designed to settle contract disputes.

1731 C. A contractor making a claim against the Institution for costs or damages due to the alleged  
1732 delaying of the contractor in the performance of its work under any public construction contract of the  
1733 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the  
1734 Institution in investigating, analyzing, negotiating, litigating, and arbitrating the claim, which percentage  
1735 shall be equal to the percentage of the contractor's total delay claim that is determined through  
1736 litigation or arbitration to be false or to have no basis in law or in fact.

1737 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of  
1738 the contractor in the performance of work under any public construction contract for the Institution, it  
1739 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to  
1740 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution  
1741 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is  
1742 determined through litigation or arbitration to have been made in bad faith.

1743 § 28. Bid bonds. -

1744 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1  
1745 million shall be accompanied by a bid bond from a surety company selected by the bidder that is  
1746 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he  
1747 will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not  
1748 exceed five percent of the amount bid.

1749 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for  
1750 which the bond was written and the next low bid or (ii) the face amount of the bid bond.

1751 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids  
1752 or proposals for construction contracts anticipated to be less than \$1 million.

1753 § 29. Performance and payment bonds. -

1754 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million  
1755 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to  
1756 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,  
1757 structures, or other improvements to real property owned by the Institution, the contractor shall furnish  
1758 to the Institution the following bonds:

1759 1. Except for transportation-related projects, a performance bond in the sum of the contract amount  
1760 conditioned upon the faithful performance of the contract in strict conformity with the plans,  
1761 specifications, and conditions of the contract. For transportation-related projects, such bond shall be in  
1762 a form and amount satisfactory to the Institution.

1763 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of  
1764 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom  
1765 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the  
1766 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor  
1767 supplied or performed in the furtherance of the work.

1768 For the purposes of this subsection, "labor or materials" include public utility services and  
1769 reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the  
1770 site.

1771 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor  
1772 that are authorized to do business in Virginia.

1773 C. The bonds shall be payable to the Commonwealth of Virginia, naming also the Institution.

1774 D. Each of the bonds shall be filed with the Institution or a designated office or official thereof.

1775 E. Nothing in this section shall preclude the Institution from requiring payment or performance  
1776 bonds for construction contracts below \$1 million.

1777 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish  
1778 a payment bond with surety thereon in the sum of the full amount of the contract with such  
1779 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are  
1780 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the

1781 work provided for in the subcontract.

1782 § 30. Alternative forms of security. -

1783 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash  
1784 escrow in the face amount required for the bond.

1785 B. If approved by the Institution's general counsel or his equivalent, a bidder may furnish to the  
1786 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain  
1787 designated funds in the face amount required for the bid, payment, or performance bond. Approval shall  
1788 be granted only upon a determination that the alternative form of security proffered affords protection  
1789 to the Institution equivalent to a corporate surety's bond.

1790 § 31. Bonds on other than construction contracts. -

1791 The Institution may require bid, payment, or performance bonds for contracts for goods or services if  
1792 provided in the invitation to bid or request for proposal.

1793 § 32. Action on performance bond. -

1794 No action against the surety on a performance bond shall be brought by the Institution unless  
1795 brought within one year after (i) completion of the contract, including the expiration of all warranties  
1796 and guarantees or (ii) discovery of the defect or breach of warranty that gave rise to the action.

1797 § 33. Actions on payment bonds; waiver of right to sue. -

1798 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished  
1799 material in accordance with the contract documents in furtherance of the work provided in any contract  
1800 for which a payment bond has been given, and who has not been paid in full before the expiration of 90  
1801 days after the day on which the claimant performed the last of the labor or furnished the last of the  
1802 materials for which he claims payment, may bring an action on the payment bond to recover any  
1803 amount due him for the labor or material. The obligee named in the bond need not be named a party to  
1804 the action.

1805 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no  
1806 contractual relationship, express or implied, with the contractor, may bring an action on the  
1807 contractor's payment bond only if he has given written notice to the contractor within 180 days from the  
1808 day on which the claimant performed the last of the labor or furnished the last of the materials for  
1809 which he claims payment, stating with substantial accuracy the amount claimed and the name of the  
1810 person for whom the work was performed or to whom the material was furnished. Notice to the  
1811 contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to  
1812 such contractor at any place where his office is regularly maintained for the transaction of business.  
1813 Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not  
1814 be subject to the time limitations stated in this subsection.

1815 C. Any action on a payment bond shall be brought within one year after the day on which the  
1816 person bringing such action last performed labor or last furnished or supplied materials.

1817 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless  
1818 it is in writing, signed by the person whose right is waived, and executed after such person has  
1819 performed labor or furnished material in accordance with the contract documents.

1820 § 34. Public inspection of certain records. -

1821 A. Except as provided in this section, all proceedings, records, contracts, and other public records  
1822 relating to procurement transactions shall be open to the inspection of any citizen, or any interested  
1823 person, firm, or corporation, in accordance with the Virginia Freedom of Information Act, Chapter 37  
1824 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia.

1825 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution  
1826 shall not be open to public inspection.

1827 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect  
1828 bid records within a reasonable time after the opening of all bids but prior to award, except in the  
1829 event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise,  
1830 bid records shall be open to public inspection only after award of the contract.

1831 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect  
1832 proposal records within a reasonable time after the evaluation and negotiations of proposals are  
1833 completed but prior to award, except in the event that the Institution decides not to accept any of the  
1834 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection  
1835 only after award of the contract.

1836 E. Any inspection of procurement transaction records under this section shall be subject to  
1837 reasonable restrictions to ensure the security and integrity of the records.

1838 F. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in  
1839 connection with a procurement transaction or prequalification application submitted pursuant to  
1840 subsection B of § 14 of these rules shall not be subject to the Virginia Freedom of Information Act,  
1841 Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia; however, the bidder, offeror, or  
1842 contractor shall (i) invoke the protections of this section prior to or upon submission of the data or

1843 other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why  
1844 protection is necessary.

1845 § 35. Exemption for certain transactions. -

1846 A. The provisions of these rules shall not apply to:

1847 1. The selection of services related to the management and investment of the Institution's endowment  
1848 funds, endowment income, or gifts. However, selection of these services shall be governed by the  
1849 Uniform Prudent Management of Institutional Funds Act, Chapter 11 (§ 64.2-1100 et seq.) of Title 64.2  
1850 of the Code of Virginia.

1851 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the  
1852 Institution. However, such purchase procedures shall provide for competition where practicable.

1853 3. Procurement of any construction or planning and design services for construction by the  
1854 Institution when (i) the planning, design, or construction is \$50,000 or less or (ii) the Institution is  
1855 obligated to conform to procurement procedures that are established by federal statutes or regulations,  
1856 whether or not those federal procedures are in conformance with the provisions of these rules.

1857 4. The purchase of goods and services by the Institution when such purchases are made under a  
1858 remedial plan established by the Governor pursuant to subsection C of § 9 of these rules.

1859 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
1860 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
1861 regulations not in conformance with the provisions of these rules, the Institution may comply with such  
1862 federal requirements, notwithstanding the provisions of these rules, only upon the written determination  
1863 of the President of the Institution or his designee that acceptance of the grant or contract funds under  
1864 the applicable conditions is in the public interest. Such determination shall state the specific provision of  
1865 these rules in conflict with the conditions of the grant or contract.

1866 § 36. Permitted contracts with certain religious organizations; purpose; limitations. -

1867 A. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.  
1868 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes  
1869 described in this section on the same basis as any other nongovernmental source without impairing the  
1870 religious character of such organization, and without diminishing the religious freedom of the  
1871 beneficiaries of assistance provided under this section.

1872 B. For the purposes of this section, "faith-based organization" means a religious organization that is  
1873 or applies to be a contractor to provide goods or services for programs funded by the block grant  
1874 provided pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of  
1875 1996, P.L. 104-193.

1876 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this  
1877 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's  
1878 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based  
1879 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of  
1880 religious freedom by the recipients of such goods, services, or disbursements.

1881 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and  
1882 purchase orders prominently display a nondiscrimination statement indicating that it does not  
1883 discriminate against faith-based organizations.

1884 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any  
1885 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on  
1886 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on  
1887 the basis of race, age, color, gender, or national origin and (ii) shall be subject to the same rules as  
1888 other organizations that contract with public bodies to account for the use of the funds provided;  
1889 however, if the faith-based organization segregates public funds into separate accounts, only the  
1890 accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in  
1891 clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

1892 F. Consistent with the federal Personal Responsibility and Work Opportunity Reconciliation Act of  
1893 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be  
1894 spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to  
1895 expenditures pursuant to contracts, if any, for the services of chaplains.

1896 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization  
1897 from any opportunity to make a bid or proposal or contract on the grounds that the faith-based  
1898 organization has exercised the right, as expressed in 42 U.S.C. § 2000e-1 et seq., to employ persons of a  
1899 particular religion.

1900 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant  
1901 to a contract between the Institution and a faith-based organization, objects to the religious character of  
1902 the faith-based organization from which the individual receives or would receive the goods, services, or  
1903 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date

1904 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

1905 The Institution shall provide to each individual who applies for or receives goods, services, or  
 1906 disbursements provided pursuant to a contract between the Institution and a faith-based organization a  
 1907 notice in boldface type that states: "Neither the Institution's selection of a charitable or faith-based  
 1908 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's  
 1909 charitable or religious character, practices, or expression. No provider of services may discriminate  
 1910 against you on the basis of religion, a religious belief, or your refusal to actively participate in a  
 1911 religious practice. If you object to a particular provider because of its religious character, you may  
 1912 request assignment to a different provider. If you believe that your rights have been violated, please  
 1913 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

1914 § 37. Exemptions from competition for certain transactions. -

1915 The Institution may enter into contracts without competition, as that term is described in subsections  
 1916 A through J of § 5 of these rules, for:

1917 1. The purchase of goods or services that are produced or performed by or related to:

1918 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the  
 1919 Blind and Vision Impaired;

1920 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported  
 1921 employment services serving the handicapped;

1922 c. Private educational institutions; or

1923 d. Other public educational institutions.

1924 2. Speakers and performing artists;

1925 3. Memberships and association dues;

1926 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of  
 1927 goods or services by the Institution;

1928 5. Group travel in foreign countries;

1929 6. Conference facilities and services;

1930 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,  
 1931 registration, and tournament fees;

1932 8. Royalties; or

1933 9. The purchase of legal services, provided that the Office of the Attorney General has been  
 1934 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

1935 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain  
 1936 transactions; limitations. -

1937 The Institution may enter into contracts for insurance or electric utility service without competitive  
 1938 sealed bidding or competitive negotiation if purchased through an association of which the Institution is  
 1939 a member if the association was formed and is maintained for the purpose of promoting the interest and  
 1940 welfare of and developing close relationships with similar public bodies, provided such association has  
 1941 procured the insurance or electric utility services by use of competitive principles and provided that the  
 1942 Institution has made a determination in advance after reasonable notice to the public and set forth in  
 1943 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the  
 1944 public. The writing shall document the basis for this determination.

1945 § 39. Definitions. -

1946 As used in §§ 39 through 46 of these rules, unless the context requires a different meaning:

1947 "Contractor" means the entity that has a direct contract with the Institution.

1948 "Debtor" means any individual, business, or group having a delinquent debt or account with any  
 1949 state agency that obligation has not been satisfied or set aside by court order or discharged in  
 1950 bankruptcy.

1951 "Payment date" means either (i) the date on which payment is due under the terms of a contract for  
 1952 provision of goods or services or (ii) if such date has not been established by contract, (a) 30 days after  
 1953 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or  
 1954 services by the Institution.

1955 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor  
 1956 to whom the contract was awarded or to any subcontractor in the performance of the work provided for  
 1957 in such contract.

1958 § 40. Exemptions. -

1959 The provisions of §§ 39 through 46 of these rules shall not apply to the late payment provisions  
 1960 contained in any public utility tariffs prescribed by the State Corporation Commission.

1961 § 41. Retainage to remain valid. -

1962 Notwithstanding the provisions of §§ 39 through 46 of these rules, the provisions of § 26 of these  
 1963 rules relating to retainage shall remain valid.

1964 § 42. Prompt payment of bills by the Institution. -

1965 A. The Institution shall promptly pay for the completely delivered goods or services by the required



1966 payment date.

1967 Payment shall be deemed to have been made when offset proceedings have been instituted, as  
1968 authorized under the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of Title 2.2 of the  
1969 Code of Virginia.

1970 B. Separate payment dates may be specified for contracts under which goods or services are  
1971 provided in a series of partial deliveries or executions to the extent that such contract provides for  
1972 separate payment for such partial delivery or execution.

1973 § 43. Defect or impropriety in the invoice or goods and/or services received. -

1974 In instances where there is a defect or impropriety in an invoice or in the goods or services  
1975 received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety  
1976 would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the  
1977 invoice or the goods or services.

1978 § 44. Date of postmark deemed to be date payment is made. -

1979 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date  
1980 payment is made for purposes of these rules.

1981 § 45. Payment clauses to be included in contracts. -

1982 Any contract awarded by the Institution shall include:

1983 1. A payment clause that obligates the contractor to take one of the two following actions within  
1984 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the  
1985 subcontractor under that contract:

1986 a. Pay the subcontractor for the proportionate share of the total payment received from the  
1987 Institution attributable to the work performed by the subcontractor under that contract; or

1988 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the  
1989 subcontractor's payment with the reason for nonpayment.

1990 2. A payment clause that requires (i) individual contractors to provide their social security numbers  
1991 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification  
1992 numbers.

1993 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts  
1994 owed by the contractor that remain unpaid after seven days following receipt by the contractor of  
1995 payment from the Institution for work performed by the subcontractor under that contract, except for  
1996 amounts withheld as allowed in subdivision 1.

1997 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,  
1998 interest shall accrue at the rate of 1% per month."

1999 Any such contract awarded shall further require the contractor to include in each of its subcontracts  
2000 a provision requiring each subcontractor to include or otherwise be subject to the same payment and  
2001 interest requirements with respect to each lower-tier subcontractor.

2002 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment  
2003 clause in this section shall not be construed to be an obligation of the Institution. A contract  
2004 modification shall not be made for the purpose of providing reimbursement for the interest charge. A  
2005 cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

2006 § 46. Interest penalty; exceptions. -

2007 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the  
2008 Institution to a vendor that remain unpaid after seven days following the payment date. However,  
2009 nothing in this section shall affect any contract providing for a different rate of interest, or for the  
2010 payment of interest in a different manner.

2011 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on  
2012 corporate loans (prime rate) at large United States money center commercial banks as reported daily in  
2013 the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of  
2014 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of  
2015 interest established pursuant to § 58.1-1812 of the Code of Virginia.

2016 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed  
2017 because of disagreement between the Institution and a vendor regarding the quantity, quality, or time of  
2018 delivery of goods or services or the accuracy of any invoice received for the goods or services. The  
2019 exception from the interest penalty provided by this subsection shall apply only to that portion of a  
2020 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of  
2021 the disagreement.

2022 D. This section shall not apply to § 26 of these rules pertaining to retainage on construction  
2023 contracts, during the period of time prior to the date the final payment is due. Nothing contained herein  
2024 shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

2025 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or  
2026 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the

2027 Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of Title 2.2 of the Code of Virginia,  
 2028 commencing with the date the payment is withheld. If, as a result of an error, a payment or portion  
 2029 thereof is withheld, and it is determined that at the time of setoff no debt was owed to the  
 2030 Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts  
 2031 withheld that remain unpaid after seven days following the payment date.

2032 § 47. Ineligibility. -

2033 A. Any bidder, offeror, or contractor refused permission to participate, or disqualified from  
 2034 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the  
 2035 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the  
 2036 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,  
 2037 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so  
 2038 requested by the bidder within five business days after receipt of the notice.

2039 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
 2040 challenging the evaluation. The Institution shall issue its written determination of disqualification or  
 2041 ineligibility based on all information in the possession of the Institution, including any rebuttal  
 2042 information, within five business days of the date the Institution received such rebuttal information.

2043 If the evaluation reveals that the bidder, offeror, or contractor should be allowed permission to  
 2044 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the  
 2045 evaluation reveals that the bidder should be refused permission to participate, or disqualified from  
 2046 participation, in the public contract, the Institution shall so notify the bidder, offeror, or contractor. The  
 2047 notice shall state the basis for the determination, which shall be final unless the bidder appeals the  
 2048 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the  
 2049 standards of § 55 of these rules, if available, or in the alternative by instituting legal action as provided  
 2050 in § 54 of these rules.

2051 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in  
 2052 accordance with the Constitution of Virginia or applicable state law or regulations, the sole relief shall  
 2053 be restoration of eligibility.

2054 § 48. Appeal of denial of withdrawal of bid. -

2055 A. A decision denying withdrawal of bid under the provisions of § 23 of these rules shall be final  
 2056 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by  
 2057 invoking administrative procedures meeting the standards of § 55 of these rules, if available, or in the  
 2058 alternative by instituting legal action as provided in § 54 of these rules.

2059 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23 of  
 2060 these rules, prior to appealing, shall deliver to the Institution a certified check or cash bond in the  
 2061 amount of the difference between the bid sought to be withdrawn and the next low bid. Such security  
 2062 shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

2063 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an  
 2064 honest exercise of discretion, but rather was arbitrary or capricious, or (ii) in accordance with the  
 2065 Constitution of Virginia, applicable state law or regulations, or the terms or conditions of the invitation  
 2066 to bid, the sole relief shall be withdrawal of the bid.

2067 § 49. Determination of nonresponsibility. -

2068 A. Following public opening and announcement of bids received on an invitation to bid, the  
 2069 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed  
 2070 bidding" in § 4 of these rules. At the same time, the Institution shall determine whether the apparent low  
 2071 bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance  
 2072 with element 5 of the definition of "competitive sealed bidding" in § 4 of these rules. If the Institution  
 2073 determines that the apparent low bidder is not responsible, it shall proceed as follows:

2074 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify  
 2075 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for  
 2076 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that  
 2077 relate to the determination, if so requested by the bidder within five business days after receipt of the  
 2078 notice.

2079 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information  
 2080 challenging the evaluation. The Institution shall issue its written determination of responsibility based on  
 2081 all information in the possession of the Institution, including any rebuttal information, within five  
 2082 business days of the date the Institution received the rebuttal information. At the same time, the  
 2083 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

2084 3. Such notice shall state the basis for the determination, which shall be final unless the bidder  
 2085 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures  
 2086 meeting the standards of § 55 of these rules, if available, or in the alternative by instituting legal action  
 2087 as provided in § 54 of these rules.

2088 The provisions of this subsection shall not apply to procurements involving the prequalification of

2089 bidders and the rights of any potential bidders under such prequalification to appeal a decision that  
2090 such bidders are not responsible.

2091 B. If, upon appeal pursuant to § 54 or 55 of these rules, it is determined that the decision of the  
2092 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious, or (ii) in  
2093 accordance with the Constitution of Virginia, applicable state law or regulations, or the terms or  
2094 conditions of the invitation to bid, and the award of the contract in question has not been made, the  
2095 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or  
2096 directed award as provided in subsection A of § 54 of these rules, or both.

2097 If it is determined that the decision of the Institution was not an honest exercise of discretion, but  
2098 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable  
2099 state law or regulations, or the terms or conditions of the invitation to bid, and an award of the  
2100 contract has been made, the relief shall be as set forth in subsection B of § 54 of these rules.

2101 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract  
2102 shall proceed under this section, and may not protest the award or proposed award under the  
2103 provisions of § 50 of these rules.

2104 D. Nothing contained in this section shall be construed to require the Institution, when procuring by  
2105 competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed  
2106 to be the most advantageous.

2107 § 50. Protest of award or decision to award. -

2108 A. Any bidder or offeror who desires to protest the award or decision to award a contract shall  
2109 submit the protest in writing to the Institution, or an official designated by the Institution, no later than  
2110 10 days after the award or the announcement of the decision to award, whichever occurs first.

2111 Public notice of the award or the announcement of the decision to award shall be given by the  
2112 Institution in the manner prescribed in the terms or conditions of the invitation to bid or request for  
2113 proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis  
2114 who desires to protest the award or decision to award such contract shall submit the protest in the  
2115 same manner no later than 10 days after posting or publication of the notice of such contract as  
2116 provided in § 5 of these rules. However, if the protest of any actual or potential bidder or offeror  
2117 depends in whole or in part upon information contained in public records pertaining to the procurement  
2118 transaction that are subject to inspection under § 34 of these rules, then the time within which the  
2119 protest shall be submitted shall expire 10 days after those records are available for inspection by such  
2120 bidder or offeror under § 34 of these rules, or at such later time as provided in this section. No protest  
2121 shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The  
2122 written protest shall include the basis for the protest and the relief sought. The Institution or designated  
2123 official shall issue a decision in writing within 10 days stating the reasons for the action taken. This  
2124 decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written  
2125 decision by invoking administrative procedures meeting the standards of § 55 of these rules, if available,  
2126 or in the alternative by instituting legal action as provided in § 54 of these rules. Nothing in this  
2127 subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of  
2128 the invitation to bid or request for proposal. The use of Alternative Dispute Resolution (ADR) shall  
2129 constitute an administrative appeal procedure meeting the standards of § 55 of these rules.

2130 B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then  
2131 the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise  
2132 it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary  
2133 or capricious, then the sole relief shall be as hereinafter provided.

2134 Where the award has been made but performance has not begun, the performance of the contract  
2135 may be enjoined. Where the award has been made and performance has begun, the Institution may  
2136 declare the contract void upon a finding that this action is in the best interest of the public. Where a  
2137 contract is declared void, the performing contractor shall be compensated for the cost of performance  
2138 up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

2139 C. Where the Institution, an official designated by it, or an appeals board determines, after a  
2140 hearing held following reasonable notice to all bidders, that there is probable cause to believe that a  
2141 decision to award was based on fraud or corruption or on an act in violation of these rules, the  
2142 Institution, designated official, or appeals board may enjoin the award of the contract to a particular  
2143 bidder.

2144 § 51. Effect of appeal upon contract. -

2145 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted  
2146 in good faith in accordance with these rules shall not be affected by the fact that a protest or appeal  
2147 has been filed.

2148 § 52. Stay of award during protest. -

2149 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event

2150 of a timely protest as provided in § 50 of these rules, or the filing of a timely legal action as provided  
2151 in § 54 of these rules, no further action to award the contract shall be taken unless there is a written  
2152 determination that proceeding without delay is necessary to protect the public interest or unless the bid  
2153 or offer would expire.

2154 § 53. Contractual disputes. -

2155 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than  
2156 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be  
2157 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing  
2158 herein shall preclude a contract from requiring submission of an invoice for final payment within a  
2159 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of  
2160 claims shall not delay payment of amounts agreed due in the final payment.

2161 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.  
2162 Such procedure, which may be contained in the contract or may be specifically incorporated into the  
2163 contract by reference and made available to the contractor, shall establish a time limit for a final  
2164 decision in writing by the Institution. If the Institution has established administrative procedures meeting  
2165 the standards of § 55 of these rules, such procedures shall be contained in the contract or specifically  
2166 incorporated in the contract by reference and made available to the contractor. The Institution may  
2167 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution  
2168 (ADR) as an administrative procedure.

2169 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these  
2170 rules, if available, or institute legal action as provided in § 54 of these rules, prior to receipt of the  
2171 Institution's decision on the claim, unless the Institution fails to render such decision within the time  
2172 specified in the contract.

2173 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within  
2174 six months of the date of the final decision on the claim by the Institution by invoking administrative  
2175 procedures meeting the standards of § 55 of these rules, if available, or in the alternative by instituting  
2176 legal action as provided in § 54 of these rules.

2177 § 54. Legal actions. -

2178 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from  
2179 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder  
2180 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging  
2181 that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an  
2182 honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the  
2183 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the invitation  
2184 to bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of  
2185 prequalification set forth in subsection B of § 14 of these rules. In the event the apparent low bidder,  
2186 having been previously determined by the Institution to be not responsible in accordance with § 4 of  
2187 these rules, is found by the court to be a responsible bidder, the court may direct the Institution to  
2188 award the contract to such bidder in accordance with the requirements of this section and the invitation  
2189 to bid.

2190 B. A bidder denied withdrawal of a bid under § 23 of these rules may bring an action in the  
2191 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes  
2192 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary  
2193 or capricious, or (ii) in accordance with the Constitution of Virginia, applicable state law or  
2194 regulations, or the terms or conditions of the invitation to bid.

2195 C. A bidder, offeror, or contractor, or a potential bidder, or offeror on a contract negotiated on a  
2196 sole source or emergency basis in the manner provided in § 5 of these rules, whose protest of an award  
2197 or decision to award under § 50 of these rules is denied, may bring an action in the appropriate circuit  
2198 court challenging a proposed award or the award of a contract, which shall be reversed only if the  
2199 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion,  
2200 but rather is arbitrary or capricious, or (ii) in accordance with the Constitution of Virginia, applicable  
2201 state law or regulations, or the terms and conditions of the invitation to bid or request for proposal.

2202 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting  
2203 of reasonable security to protect the Institution.

2204 E. A contractor may bring an action involving a contract dispute with the Institution in the  
2205 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be  
2206 named as a defendant in any action brought pursuant to these rules or § 33.1-387 of the Code of  
2207 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of  
2208 Accounts.

2209 F. A bidder, offeror, or contractor need not utilize administrative procedures meeting the standards  
2210 of § 55 of these rules, if available, but if those procedures are invoked by the bidder, offeror, or  
2211 contractor, the procedures shall be exhausted prior to instituting legal action concerning the same

2212 procurement transaction unless the Institution agrees otherwise.

2213 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a  
2214 contractor.

2215 § 55. Administrative appeals procedure. -

2216 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to  
2217 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from  
2218 disqualifications and determinations of nonresponsibility, (iv) appeals from decisions on disputes arising  
2219 during the performance of a contract, or (v) any of these. Such administrative procedure may include  
2220 the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested  
2221 person or panel, the opportunity to present pertinent information and the issuance of a written decision  
2222 containing findings of fact. The disinterested person or panel shall not be an employee of the  
2223 governmental entity against whom the claim has been filed. The findings of fact shall be final and  
2224 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary, or capricious; (b) so  
2225 grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings  
2226 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these  
2227 rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a  
2228 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution  
2229 Council in establishing an ADR procedure.

2230 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute  
2231 judicial review if such action is brought within 30 days of receipt of the written decision.

2232 § 56. Alternative dispute resolution. -

2233 The Institution may enter into agreements to submit disputes arising from contracts entered into  
2234 pursuant to these rules to arbitration and utilize mediation and other alternative dispute resolution  
2235 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of  
2236 Virginia, as applicable.

2237 § 57. Ethics in public contracting. -

2238 The Institution and its governing body, officers, and employees shall be governed by the Ethics in  
2239 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of  
2240 Chapter 43 of Title 2.2 of the Code of Virginia.

2241 EXHIBIT E

2242  
2243 MANAGEMENT AGREEMENT  
2244 BETWEEN  
2245 THE COMMONWEALTH OF VIRGINIA  
2246 AND  
2247 JAMES MADISON UNIVERSITY  
2248 PURSUANT TO  
2249 THE RESTRUCTURED HIGHER EDUCATION  
2250 FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT

2251  
2252 POLICY GOVERNING  
2253 HUMAN RESOURCES FOR  
2254 PARTICIPATING COVERED EMPLOYEES  
2255 AND OTHER UNIVERSITY EMPLOYEES

2256  
2257 THE RECTOR AND BOARD OF VISITORS  
2258 OF JAMES MADISON UNIVERSITY IN VIRGINIA  
2259 POLICY GOVERNING  
2260 HUMAN RESOURCES FOR  
2261 PARTICIPATING COVERED EMPLOYEES  
2262 AND OTHER UNIVERSITY EMPLOYEES

2263 I. PREAMBLE.

2264 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter  
2265 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia, establishes a process for the  
2266 restructuring of institutions of higher education of the Commonwealth of Virginia and provides that  
2267 upon becoming a covered institution, the University shall have responsibility and accountability for  
2268 human resources management for all University employees, defined in the Act as "covered employees,"  
2269 who pursuant to subsection A of § 23.1-1020 of the Act shall continue to be "state employee[s]".  
2270 Specifically, the Act provides that, as of the effective date of its initial management agreement with the  
2271 Commonwealth, all classified employees shall continue to be covered by the Virginia Personnel Act,  
2272 Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies

2273 and procedures prescribed by the Virginia Department of Human Resource Management, provided that  
 2274 they may subsequently elect to become participating covered employees. All participating covered  
 2275 employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title  
 2276 2.2 of the Code of Virginia; (ii) remain subject to the State Grievance Procedure, Chapter 30  
 2277 (§ 2.2-3000 et seq.) of Title 2.2 of the Code of Virginia, provided they were subject to the state  
 2278 grievance procedure prior to that effective date; (iii) participate in a compensation plan that is subject  
 2279 to the review and approval of the board of visitors; and (iv) be hired pursuant to procedures that are  
 2280 based on merit and fitness and may, subject to certain specified conditions, continue to participate in  
 2281 either state-sponsored or University-sponsored benefit plans as described by the management agreement.

2282 The provisions of this policy are adopted by the board of visitors to implement the governing law  
 2283 and constitute the human resources policies to be included in any human resources system adopted by  
 2284 the University for its employees.

2285 This policy is intended to cover the authority that may be granted to the University pursuant to  
 2286 Article 4 of the Act. Any other powers and authorities granted to the University pursuant to the general  
 2287 appropriation act, or any other sections of the Code of Virginia, including other provisions of the Act  
 2288 and the University's enabling statutes, are not affected by this policy.

## 2289 II. DEFINITIONS.

2290 As used in this policy, the following terms shall have the following meanings, unless the context  
 2291 requires otherwise:

2292 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
 2293 Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.

2294 "Board of visitors" or "board" means the rector and board of visitors of the University.

2295 "Classified employees" means employees who are covered by the Virginia Personnel Act, Chapter 29  
 2296 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by  
 2297 the Virginia Department of Human Resource Management and who are not participating covered  
 2298 employees.

2299 "Covered employee" or "University employee" means any person who is employed by the University  
 2300 on either a salaried or nonsalaried (wage) basis.

2301 "Covered institution" means, on and after the effective date of its initial management agreement with  
 2302 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has  
 2303 entered into a management agreement with the Commonwealth to be governed by the provisions of  
 2304 Article 4 of the Act.

2305 "Effective date" means the effective date of the initial management agreement between the University  
 2306 and the Commonwealth.

2307 "Employee" means covered employee unless the context clearly indicates otherwise.

2308 "Enabling statutes" has the same meaning as provided in § 23.1-1000 of the Act.

2309 "Governing law" means the Act and the University's enabling statutes.

2310 "Management agreement" means an agreement between the Commonwealth of Virginia and the  
 2311 University that enables the University to be governed by Article 4 of the Act.

2312 "Participating covered employee" means (i) all salaried nonfaculty University employees who were  
 2313 employed as of the day prior to the effective date and who elect pursuant to § 23.1-1022 of the Act to  
 2314 participate in and be governed by such human resources program or programs, plans, policies, and  
 2315 procedures established by the University, (ii) all salaried nonfaculty University employees who are  
 2316 employed by the University on or after the effective date, (iii) all nonsalaried nonfaculty University  
 2317 employees without regard to when they were hired, and (iv) all faculty University employees without  
 2318 regard to when they were hired.

2319 "Systems" means collectively the University human resources system that is in effect from time to  
 2320 time.

2321 "University" means James Madison University.

2322 "University human resources system" means the human resources system for University employees as  
 2323 provided for in this policy.

## 2324 III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.

2325 The University has had human resources system autonomy through decentralization for its employees  
 2326 for some time. For example, general faculty at the University are expressly exempt from the Virginia  
 2327 Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia. The University has  
 2328 had decentralization in most human resources functions and activities since the late 1980s and early  
 2329 1990s, including, but not limited to, the running of payrolls and the administration of hiring,  
 2330 classification, and promotion practices of administrative, professional, and instructional faculty.

2331 The Act extends and reinforces the human resources autonomy previously granted to the University.  
 2332 This policy therefore is adopted by the board of visitors to enable the University to develop, adopt, and  
 2333 have in place by or after the effective date of its initial management agreement with the Commonwealth  
 2334 a human resources system or systems for all University employees. On the effective date, and until

2335 *changed by the University or unless otherwise specified in this policy, the systems for University*  
 2336 *employees shall be the same systems applicable to those employees in effect immediately prior to the*  
 2337 *effective date.*

2338 **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

2339 *The board of visitors of the University shall at all times be fully and ultimately accountable for the*  
 2340 *proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation*  
 2341 *of, this policy. Consistent with this full and ultimate accountability, however, the board may, pursuant to*  
 2342 *its legally permissible procedures, specifically delegate either herein or by separate board resolution the*  
 2343 *duties and responsibilities set forth in this policy to a person or persons within the University, who,*  
 2344 *while continuing to be fully accountable for such duties and responsibilities, may further delegate the*  
 2345 *implementation of those duties and responsibilities pursuant to the University's usual delegation policies*  
 2346 *and procedures.*

2347 **V. UNIVERSITY HUMAN RESOURCES SYSTEMS.**

2348 **A. Adoption and Implementation of University Human Resources Systems.**

2349 *The President of the University, acting through the Senior Vice President of Administration and*  
 2350 *Finance or his designee, is hereby authorized to adopt and implement human resources systems for*  
 2351 *employees of the University that are consistent with the governing law, other applicable provisions of*  
 2352 *law, these University human resources policies for University employees, and any other human*  
 2353 *resources policies adopted by the Department of Human Resource Management or the board of visitors*  
 2354 *for University personnel, unless University employees are exempted from those other human resources*  
 2355 *policies by law or policy. The University human resources systems shall include a delegation of*  
 2356 *personnel authority to appropriate University officials responsible for overseeing and implementing the*  
 2357 *University human resources systems, including a grant of authority to such officials to engage in further*  
 2358 *delegation of authority as the President of the University, acting through the Senior Vice President of*  
 2359 *Administration and Finance or his designee, deems appropriate.*

2360 *The University commits to regularly engage employees in appropriate discussions and to receive*  
 2361 *employee input as the new University human resources systems are developed. The University will*  
 2362 *regularly communicate the details of new proposals to all employees who are eligible to participate in*  
 2363 *the University human resources system through written communication, open meetings, and website*  
 2364 *postings as appropriate, so that employees will have full information that will help them evaluate the*  
 2365 *merits of the new human resources system compared to the then-current state human resources system.*

2366 *Effective on the effective date of its initial management agreement with the Commonwealth, and until*  
 2367 *amended as described in this subsection, the University's human resources systems shall consist of the*  
 2368 *following:*

2369 *1. The current "James Madison University Faculty Handbook," as it is posted on the Provost's*  
 2370 *website, <https://www.jmu.edu/facultyhandbook/>, and periodically amended;*

2371 *2. The current human resources system for classified employees in the University as posted on the*  
 2372 *Virginia Department of Human Resource Management website at*  
 2373 *<http://www.dhrm.virginia.gov/hrpolicies>; and*

2374 *3. The human resources system for participating covered employees, that shall include nonsalaried*  
 2375 *(wage) employees, as posted on the University's human resources website,*  
 2376 *<https://www.jmu.edu/humanresources/>.*

2377 *All the systems described in this subsection above, except the system described in subdivision 2, may*  
 2378 *be amended by the President of the University, acting through the Senior Vice President of*  
 2379 *Administration and Finance or his designee, consistent with these human resources policies. The system*  
 2380 *described in subdivision 2 may be amended only by the State.*

2381 **B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors Human**  
 2382 **Resources Policies.**

2383 *The President of the University, acting through the Senior Vice President of Administration and*  
 2384 *Finance or his designee, shall take all necessary and reasonable steps to assure (i) that the University*  
 2385 *officials who develop, implement, and administer the University human resources systems authorized by*  
 2386 *governing law and these human resources policies are knowledgeable regarding the requirements of the*  
 2387 *governing law, other applicable provisions of law, these University human resources policies, and other*  
 2388 *applicable board of visitors human resources policies affecting University employees and (ii) that*  
 2389 *compliance with such laws and human resources policies is achieved.*

2390 **VI. HUMAN RESOURCES POLICIES.**

2391 *The University human resources systems adopted by the University pursuant to governing law and*  
 2392 *this policy, as set forth in Section V above, shall embody the following human resources policies and*  
 2393 *principles:*

2394 **A. Election by University Salaried Nonfaculty Employees.**

2395 *Upon the adoption by the University of a University human resources system, each salaried*

2396 nonfaculty University employee who was in the employment of the University as of the day prior to the  
2397 effective date of its initial management agreement with the Commonwealth shall be permitted to elect to  
2398 participate in and be governed by either (i) the state human resources program set forth in Chapters 28  
2399 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, and administered  
2400 by the Department of Human Resource Management, or (ii) the University human resources system, as  
2401 appropriate. A salaried nonfaculty University employee who elects to continue to be governed by the  
2402 state human resources program described in this subsection above shall continue to be governed by all  
2403 state human resources and benefit plans, programs, policies, and procedures that apply to and govern  
2404 state employees. A salaried nonfaculty University employee who elects to participate in and be governed  
2405 by the University human resources system, by that election, shall be deemed to have elected to be  
2406 eligible to participate in and to be governed by the University human resources system, authorized  
2407 alternative insurance, and severance plans, programs, policies, and procedures that are or may be  
2408 adopted by the University as part of that University human resources system.

2409 The University shall provide each of its salaried nonfaculty University employees who were in the  
2410 employment of the University as of the day prior to the effective date of the University's initial  
2411 management agreement with the Commonwealth at least 90 days after the date on which the University's  
2412 human resources system becomes effective for that University employee's classification of employees to  
2413 make the election required by the prior paragraph. If such a salaried nonfaculty University employee  
2414 does not make an election by the end of that specified election period, that University employee shall be  
2415 deemed not to have elected to participate in the University human resources system. If such a salaried  
2416 nonfaculty University employee elects to participate in the University human resources system, that  
2417 election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty  
2418 University employees who have elected to continue to participate in the state human resources program  
2419 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  
2420 Virginia, an opportunity to elect to participate in the University human resources system, provided that,  
2421 each time prior to offering such opportunity to such salaried nonfaculty University employees, and at  
2422 least once every two years after the effective date of the University human resources system, the  
2423 University shall make available to each of its salaried nonfaculty University employees a comparison of  
2424 its human resources system for that classification of salaried nonfaculty University employee with the  
2425 state human resources program for comparable state employees, including but not limited to a  
2426 comparability assessment of compensation and benefits.

2427 A copy of the human resources program comparison shall be provided to the Department of Human  
2428 Resource Management.

2429 B. Classification and Compensation.

2430 1. General. The systems shall include classification and compensation plans that are fair and  
2431 reasonable and are based on the availability of University financial resources. The plans adopted by the  
2432 University for participating covered employees shall be independent of, and need not be based on, the  
2433 classification and compensation plans of the Commonwealth, do not require the approval of any state  
2434 agency or officer, and shall be subject to the review and approval by the board of visitors as set forth  
2435 in subdivision 3. The University shall provide information on its classification and compensation plans  
2436 to all University employees. The plans applicable to participating covered employees may or may not  
2437 include changes in classification or compensation announced by the Commonwealth, depending on such  
2438 factors as the availability of necessary financial resources to fund any such changes and subject to the  
2439 review and approval by the board of visitors of any major changes in the University's compensation  
2440 plans.

2441 2. Classification Plan. The systems shall include one or more classification plans for University  
2442 employees that classify positions according to job responsibilities and qualifications. On the effective  
2443 date and until changed by the University, the classification plans shall be the same plans that are in  
2444 effect for each group of employees immediately prior to the effective date.

2445 3. Compensation Plan. The systems shall include one or more compensation plans for each  
2446 University employee classification or group. On the effective date and until changed by the Department  
2447 of Human Resource Management, the compensation plan for classified employees in the University shall  
2448 be the compensation plan in effect immediately prior to the effective date, known as the  
2449 Commonwealth's Classified Compensation Plan. On the effective date and until changed by the  
2450 University, the compensation plan or plans for all participating covered employees shall be the  
2451 compensation plan or plans in effect immediately prior to the effective date. The University may adopt  
2452 one or more compensation plans for participating covered employees that are non-graded plan(s) based  
2453 on internal and external market data and other relevant factors to be determined annually. Any major  
2454 change in compensation plans for participating covered employees shall be reviewed and approved by  
2455 the board of visitors before that change becomes effective. Any change recommended in the  
2456 compensation plans may take into account the prevailing rates in the labor market for the jobs in  
2457 question or for similar positions, the relative value of jobs, the competency and skills of the individual



2458 employee, internal equity, and the availability of necessary financial resources to fund the proposed  
 2459 change. The compensation payable to University employees shall be authorized and approved only by  
 2460 designated University officers delegated such authority by the University, and shall be consistent with  
 2461 the approved compensation plan for the relevant position or classification. Further approval by any  
 2462 other state agency, governmental body, or officer is not required for setting, adjusting, or approving the  
 2463 compensation payable to individual participating covered employees.

2464 4. Wages. The systems shall include policies and procedures for the authorization, computation, and  
 2465 payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and  
 2466 call back, and for the payment of hourly employees.

2467 5. Payment of Compensation. The systems shall include policies and procedures for paying  
 2468 compensation to employees, including the establishment of one or more payday schedules.

2469 6. Work Schedule and Workweek. The systems shall include policies and procedures for the  
 2470 establishment of, and modifications to, work schedules and workweeks for all University employees,  
 2471 including alternative work schedules and sites and telecommuting policies and procedures.

2472 7. Other Classification and Compensation Policies and Procedures. The systems may include any  
 2473 other reasonable classification and compensation policies and procedures the President of the  
 2474 University, acting through the Senior Vice President of Administration and Finance or his designee,  
 2475 deems appropriate.

2476 C. Benefits.

2477 The systems shall provide fringe benefits to all benefits-eligible employees, including retirement  
 2478 benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The  
 2479 benefits provided shall include a basic plan of benefits for each benefits-eligible employee, and may  
 2480 include an optional benefits plan for benefits-eligible employees, including additional insurance  
 2481 coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance  
 2482 programs, employee intramural and recreational passes, and other wellness programs. As provided in  
 2483 subsections B and C § 23.1-1025 of the Act, the University may require participating covered employees  
 2484 to pay all or a portion of the cost of group life, disability, and accidental death and dismemberment  
 2485 insurance, which may be collected through a payroll deduction program. Participating covered  
 2486 employees shall not be required to present evidence of insurability for basic group life insurance  
 2487 coverage. The board of visitors may elect to provide benefits through Virginia Retirement System group  
 2488 insurance programs under the terms of and to the extent allowed by § 23.1-1025 of the Act or any other  
 2489 provision of law.

2490 Notwithstanding the provisions of this subsection above, pursuant to subsection A of § 23.1-1020 of  
 2491 the Act, and unless and until that section is amended, the state retirement system, state health insurance  
 2492 program, and state workers' compensation coverage program as they may be amended from time to  
 2493 time, shall continue to apply to and govern all eligible University employees.

2494 The systems may provide different benefits plans for reasonably different groups or classifications of  
 2495 employees, and may provide benefits to part-time employees. On the effective date and until changed by  
 2496 the appropriate governing authority, the benefits plans provided by the University to classified  
 2497 employees and participating covered employees shall be the benefits plans provided to that group or  
 2498 classification as of the date immediately prior to that effective date. On or after the effective date,  
 2499 alternative University group life, accidental death and dismemberment, and short-term and long-term  
 2500 disability plans may be provided to eligible participating covered employees, or at the election of the  
 2501 board of visitors and subject to the execution of participation agreements as provided in subsections B  
 2502 and C of § 23.1-1025 of the Act, they may be provided by the appropriate state programs, but no  
 2503 contributions to the state programs by the University shall be required for participating covered  
 2504 employees who do not participate in the programs. Subject to the provisions of the Act, any new plans,  
 2505 programs, and material changes permitted under current law in University employee benefit plans, other  
 2506 than classified employee benefit plans, shall be approved by the board of visitors, including the  
 2507 authority to increase the cash match contribution rate up to the limit permitted by the Code of Virginia  
 2508 based on available resources and the authority to implement cafeteria-style benefits for University  
 2509 employees other than classified employees.

2510 Insurance and all proceeds therefrom provided pursuant to § 23.1-1025 of the Act shall be exempt  
 2511 from legal process and may be subject to voluntary assignment as provided in subsection A of  
 2512 § 23.1-1025 of the Act.

2513 D. Employee Relations.

2514 1. General. The systems shall contain provisions that protect the rights and privileges of University  
 2515 employees consistent with sound management principles and fair employment practice law.

2516 2. Employee Safety and Health. The systems shall contain provisions that promote workplace safety  
 2517 compliance with applicable law and regulations.

2518 3. Employee Work Environment. The systems shall promote a work environment that is conducive to

2519 *the performance of job duties and free from intimidation or coercion in violation of state or federal law,*  
2520 *including sexual harassment or other discrimination.*

2521 *4. Employee Recognition. The systems may provide for the use of leave awards and bonuses specific*  
2522 *to policies and procedures for awarding, honoring, or otherwise recognizing University employees,*  
2523 *including but not limited to those who have performed particularly meritorious service for the*  
2524 *University, have been employed by the University for specified periods of time, or have retired from the*  
2525 *University after lengthy service.*

2526 *5. Counseling Services. The systems shall provide counseling services through the State's Employee*  
2527 *Assistance Program or a University Employee Assistance Program to any eligible University employee*  
2528 *experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the*  
2529 *circumstances under which the time necessary to participate in such counseling may be granted.*

2530 *6. Unemployment Compensation. The systems shall ensure that University employees receive the full*  
2531 *unemployment compensation benefits to which they are legally entitled and that the University's liability*  
2532 *is limited to legitimate claims for such benefits.*

2533 *7. Workers' Compensation. The systems shall ensure that University employees have workers'*  
2534 *compensation benefits to which they are legally entitled pursuant to the State Employees Workers'*  
2535 *Compensation Program administered by the Department of Human Resource Management.*

2536 *8. Performance Planning and Evaluation. The systems shall include one or more performance*  
2537 *planning and evaluation processes for University employees that (i) establish and communicate the*  
2538 *University's performance expectations, (ii) help develop productive working relationships, (iii) allow*  
2539 *employees to present their views concerning their performance, (iv) identify areas for training or*  
2540 *professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify*  
2541 *how superlative or inadequate performance shall be addressed, and (vii) ensure that all University*  
2542 *employees are provided relevant information on the evaluation process. The systems may include*  
2543 *separate performance and evaluation processes for reasonably distinguishable groups of University*  
2544 *employees. On the effective date, the existing merit-based performance management system for faculty*  
2545 *shall continue, until amended by the University. On or after that effective date, University nonfaculty*  
2546 *salaried participating covered employees may be subject to a variable merit-based performance*  
2547 *management system.*

2548 *9. Standards of Conduct and Performance. In order to protect the well-being and rights of all*  
2549 *employees and to ensure safe, efficient University operations and compliance with the law, the systems*  
2550 *shall establish rules of personal conduct and standards of acceptable work performance for University*  
2551 *salaried nonfaculty employees and policies for corrective discipline. In general, the policies for*  
2552 *corrective discipline shall serve to (i) establish a uniform and objective process for correcting or*  
2553 *disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more*  
2554 *serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action*  
2555 *to employee conduct occurring only when employees are at work or are otherwise representing the*  
2556 *University in an official or work-related capacity, unless otherwise specifically provided by the policies*  
2557 *of the systems or other applicable law. The systems may provide for a probationary period for new and*  
2558 *re-employed University salaried nonfaculty employees, during which period the policies for corrective*  
2559 *discipline shall not be applicable and the employee may not use the grievance procedure set forth in*  
2560 *subdivision 10. The systems may include separate rules of personal conduct and standards of acceptable*  
2561 *work performance and policies for corrective discipline for reasonably distinguishable groups of*  
2562 *University employees.*

2563 *10. Grievance Procedure. As provided in the governing law, employees shall be encouraged to*  
2564 *resolve employment-related problems and complaints informally, and shall be permitted to discuss their*  
2565 *concerns freely and without fear of retaliation with immediate supervisors and management. In the event*  
2566 *that such problems cannot be resolved informally, all salaried nonfaculty University employees,*  
2567 *regardless of their date of hire, shall have access, as provided in subsection A of § 23.1-1020 and in*  
2568 *§ 23.1-1023 of the Act, to the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 of*  
2569 *the Code of Virginia, to the extent it was applicable to their classification of employees prior to the*  
2570 *effective date. On the effective date and until changed by the University, the faculty grievance*  
2571 *procedures in effect immediately prior to the effective date shall continue.*

2572 *11. Discrimination Complaints. If a classified employee believes discrimination has occurred, the*  
2573 *classified employee may file a complaint with the Department of Human Resource Management Office of*  
2574 *Equal Employment and Dispute Resolution. All covered employees and applicants for employment after*  
2575 *the effective date of the University's initial management agreement with the Commonwealth shall file a*  
2576 *complaint with the appropriate University office or with the appropriate federal agencies.*

2577 *12. Layoff Policy. The systems shall include one or more layoff policies for salaried University*  
2578 *employees who lose their jobs for reasons other than their job performance or conduct, such as a*  
2579 *reduction in force or reorganization at the University. These University layoff policies shall govern such*  
2580 *issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii)*

2581 notice to employees affected by a layoff, (iv) placement options within the University or its respective  
 2582 major divisions and within other parts of the University, (v) the preferential employment rights, if any,  
 2583 of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for  
 2584 recalling employees. In accordance with the terms of the Act, University employees who (a) were  
 2585 employed prior to the effective date of the University's initial management agreement with the  
 2586 Commonwealth, (b) would otherwise be eligible for severance benefits under the Workforce Transition  
 2587 Act of 1995, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of Virginia, (c) were covered by  
 2588 the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 of the Code of Virginia, prior to  
 2589 that effective date, and (d) are separated because of a reduction in force shall have the same  
 2590 preferential hiring rights with state agencies and other executive branch institutions as classified  
 2591 employees have under § 2.2-3201 of the Code of Virginia. Conversely, the University shall recognize the  
 2592 hiring preference conferred by § 2.2-3201 of the Code of Virginia on state employees who were hired by  
 2593 a state agency or executive branch institution before the effective date of the University's initial  
 2594 management agreement with the Commonwealth and who were separated after that date by that state  
 2595 agency or executive branch institution because of a reduction in workforce. If the University has  
 2596 adopted a classification system pursuant to § 23.1-1021 of the Act that differs from the classification  
 2597 system administered by the Department of Human Resource Management, the University shall classify  
 2598 the separated employee according to its classification system and shall place the separated employee  
 2599 appropriately. The University may include separate policies for reasonably distinguishable groups of  
 2600 University employees. On or after the effective date of the University's initial management agreement  
 2601 with the Commonwealth, all employees from other state agencies and executive branch institutions who  
 2602 are placed by the University under the provisions of the State Layoff Policy shall be participating  
 2603 covered employees.

2604 13. *Severance Benefits.* In accordance with the terms of the Act, the University shall adopt severance  
 2605 policies for salaried participating covered employees who are involuntarily separated for reasons  
 2606 unrelated to performance or conduct. The terms and conditions of such policies shall be determined by  
 2607 the board of visitors. Classified employees who otherwise would be eligible and were employed prior to  
 2608 the effective date of the University's initial management agreement with the Commonwealth shall be  
 2609 covered by the Workforce Transition Act of 1995, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the  
 2610 Code of Virginia. The University and the Board of the Virginia Retirement System may negotiate a  
 2611 formula according to which cash severance benefits may be converted to years of age or creditable  
 2612 service for participating covered employees who participate in the Virginia Retirement System. An  
 2613 employee's becoming, on the effective date, a covered employee shall not constitute a severance or  
 2614 reduction in force to which severance policies or policies pursuant to the Workforce Transition Act of  
 2615 1995, Chapter 32 (§ 2.2-3200 et seq.) of Title 2.2 of the Code of Virginia, would apply.

2616 14. *Use of Alcohol and Other Drugs.* The systems shall include policies and procedures that (i)  
 2617 establish and maintain a work environment at the University that is free from the adverse effect of  
 2618 alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988, 41  
 2619 U.S.C. § 81, and with the James Madison University Alcohol and Other Drugs Policy, (iii) describe the  
 2620 range of authorized disciplinary action, including termination where appropriate, for violations of such  
 2621 policies and procedures and the process to be followed in taking such disciplinary action, (iv) provide  
 2622 University employees access to assistance and treatment for problems involving alcohol and other drugs,  
 2623 (v) provide for the circumstances under which employees are required to report certain violations of the  
 2624 policies and procedures to their supervisor, and the University is required to report those violations to a  
 2625 federal contracting or granting agency, (vi) describe the circumstances under which personnel records  
 2626 of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and  
 2627 (vii) provide notice to University employees of the scope and content of the University alcohol and other  
 2628 drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal  
 2629 Omnibus Transportation Employee Testing Act of 1991, P.L. 102-143, the systems may provide for  
 2630 pre-employment, reasonable suspicion, random, post-accident, return-to-duty, and follow-up alcohol and  
 2631 other drug testing for University positions that are particularly safety sensitive, such as those requiring  
 2632 a commercial driver's license.

2633 15. *Background Checks.* The systems shall include a process for conducting background checks that  
 2634 may include but is not limited to reference checks, educational/professional credentialing checks, and  
 2635 conviction and driver's records checks on applicants for full-time or part-time positions at the  
 2636 University, and for addressing situations where employees do not disclose a conviction on their  
 2637 application or otherwise falsify their application with regard to information concerning their  
 2638 educational/professional credentials and/or prior convictions.

2639 16. *Other Employee Relations Policies and Procedures.* The systems shall include any other  
 2640 reasonable employee relations policies or procedures that the President of the University, acting through  
 2641 the Senior Vice President of Administration and Finance or his designee, deems appropriate, that may

2642 include, but are not limited to, policies or procedures relating to orientation programs for new or  
2643 re-employed University employees, an employee suggestion program, the responsibility of University  
2644 employees for property placed in their charge, work breaks, inclement weather and emergencies, and  
2645 employment outside the University.

2646 *E. Leave and Release Time.*

2647 The systems shall include policies and procedures regarding leave for eligible employees. The  
2648 systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal  
2649 uses. The systems may provide for release time for such matters as the donation of blood, participation  
2650 in an employee assistance program, and other appropriate employment-related matters. On or after the  
2651 effective date of its initial management agreement with the Commonwealth, and until a new program is  
2652 adopted by the appropriate authority, the University shall continue to provide leave and release time to  
2653 participating covered employees in accordance with the leave and release time policies and procedures  
2654 applicable to each classification of employees prior to that effective date. On or after that effective date,  
2655 the University may provide an alternative leave and release time system for salaried nonfaculty  
2656 participating covered employees.

2657 *F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

2658 1. *Equal Employment Opportunity and Nondiscrimination.* The systems shall contain policies and  
2659 procedures to ensure that all aspects of human resources management, including the employment of  
2660 University employees, meet all requirements of federal and state law and of the relevant policies of the  
2661 board of visitors with regard to equal employment opportunity and nondiscrimination.

2662 2. *Employment.* The systems shall include policies and procedures for the recruitment, selection, and  
2663 hiring of University employees that are based on merit and fitness, including where appropriate a  
2664 requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference  
2665 checks, and conviction record checks. On and after the effective date, the University shall post all  
2666 salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's  
2667 job posting system, and other external media as appropriate. The systems shall establish designated  
2668 veterans' re-employment rights in accordance with applicable law.

2669 In order to encourage employees to attain the highest level positions for which they are qualified,  
2670 and to compensate employees for accepting positions of increased value and responsibility, the systems  
2671 shall include policies and procedures governing the promotion of employees, including the effect of  
2672 promotion on an employee's compensation.

2673 On or after the effective date of the University's initial management agreement with the  
2674 Commonwealth, all employees hired from other state agencies shall be participating covered employees.  
2675 University classified employees who change jobs within the University through a competitive employment  
2676 process—i.e., promotion or transfer—shall have the choice of remaining a classified employee or  
2677 becoming a participating covered employee. If a classified employee elects to become a participating  
2678 covered employee, that decision shall be irrevocable.

2679 3. *Notice of Separation.* The systems shall include policies and procedures requiring reasonable  
2680 notice, where appropriate, of a decision either by the employee or by the University to separate the  
2681 employee from the University in accordance with policies governing performance, conduct, or layoff.

2682 *G. Information Systems.*

2683 The University shall provide an electronic file transfer of information on all salaried University  
2684 employees and shall continue to provide the employee position reports to meet the human resources  
2685 reporting requirements specified by law or by request of the Governor or the General Assembly, unless  
2686 the University is specifically exempted from those requirements. The University shall conduct  
2687 assessments to demonstrate its accountability for human resources practices that comply with laws and  
2688 regulations. The Department of Human Resource Management and the University have entered into a  
2689 Memorandum of Understanding, attached hereto as Attachment 2, that may be amended from time to  
2690 time by agreement of the parties, regarding the specific data and reporting requirements. The University  
2691 shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department  
2692 of Human Resource Management.

2693 **VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND**  
2694 **OTHER BOARD OF VISITORS POLICIES AFFECTING UNIVERSITY PERSONNEL.**

2695 On and after the effective date, University employees shall be subject to the terms and conditions of  
2696 the Act and the management agreement between the Commonwealth and the University. Classified  
2697 employees shall continue to be subject to the human resources policies and exceptions to those policies  
2698 adopted or approved by the Department of Human Resource Management.

2699 In addition, all University employees also shall remain subject to any other human resources policies  
2700 adopted by the board of visitors applicable to University personnel unless University employees or a  
2701 subset thereof are specifically exempted from those other human resources policies either by those other  
2702 policies or by this policy.

2703

Memorandum of Understanding  
Between James Madison University and the  
Department of Human Resource Management Regarding  
the Reporting of Human Resources Management Data

This Memorandum of Understanding (MOU), 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, Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia, and is hereby entered into between the University 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. Other reports to be provided by the University include the following:

a. Monthly employment position report.

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

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

APPROVALS:

James Madison University:

By: .....Date.....

Senior Vice for Administration and Finance, Department of Human Resource Management:

By: .....Date.....

EXHIBIT F

MANAGEMENT AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
JAMES MADISON UNIVERSITY  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT  
  
POLICY GOVERNING  
FINANCIAL OPERATIONS AND MANAGEMENT  
  
THE RECTOR AND BOARD OF VISITORS  
OF JAMES MADISON UNIVERSITY  
POLICY GOVERNING  
FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 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

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2765 to the adoption of policies by their governing boards and the approval of management agreements to be  
 2766 negotiated with the Commonwealth.

2767 The following provisions of this policy constitute the adopted board of visitors policies regarding the  
 2768 University's financial operations and management.

2769 This policy is intended to cover the authority that may be granted to the University pursuant to  
 2770 Article 4 of the Act. Any other powers and authorities granted to the University pursuant to the general  
 2771 appropriation act, or any other sections of the Code of Virginia, including other provisions of the Act  
 2772 and the University's enabling statutes, are not affected by this policy.

## 2773 II. DEFINITIONS.

2774 As used in this policy, the following terms shall have the following meanings, unless the context  
 2775 requires otherwise:

2776 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,  
 2777 Chapter 10 (§ 23.1-1000 et seq.) of Title 23.1 of the Code of Virginia.

2778 "Board of visitors" or "board" means the rector and board of visitors of the University.

2779 "Covered institution" means, on or after the effective date of its initial management agreement with  
 2780 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has  
 2781 entered into a management agreement with the Commonwealth to be governed by the provisions of  
 2782 Article 4 of the Act.

2783 "Effective date" means the effective date of the initial management agreement between the University  
 2784 and the Commonwealth.

2785 "Enabling statutes" has the same meaning as provided in § 23.1-1000 of the Act.

2786 "Management agreement" means an agreement between the Commonwealth of Virginia and the  
 2787 University that enables the University to be governed by Article 4 of the Act.

2788 "State tax-supported debt" means bonds, notes, or other obligations issued under Article X, Section 9  
 2789 (a), 9 (b), 9 (c), or 9 (d) of the Constitution of Virginia, if the debt service payments are made or  
 2790 ultimately are to be made from general government funds, as defined in the December 19, 2017, Report  
 2791 to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is  
 2792 amended from time to time.

2793 "University" means James Madison University.

## 2794 III. SCOPE OF POLICY.

2795 This policy applies to the University's responsibility for management, investment, and stewardship of  
 2796 all its financial resources, including but not limited to, general, nongeneral, and private funds. This  
 2797 responsibility includes maintaining an independent uniform system of accounting, financial reporting,  
 2798 and internal controls adequate to protect and account for the University's financial resources as well as  
 2799 allowing for recording of required information into Cardinal.

## 2800 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

2801 The board of visitors shall at all times be fully and ultimately accountable for the proper fulfillment  
 2802 of the duties and responsibilities set forth in, and for the appropriate implementation of this policy.  
 2803 Consistent with this full and ultimate accountability, however, the board may, pursuant to its legally  
 2804 permissible procedures, specifically delegate either herein or by separate board resolution the duties  
 2805 and responsibilities set forth in this policy to a person or persons within the University who, while  
 2806 continuing to be fully accountable for such duties and responsibilities, may further delegate the  
 2807 implementation of those duties and responsibilities pursuant to the University's usual delegation policies  
 2808 and procedures.

## 2809 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

2810 The President of the University, acting through the Senior Vice President of Administration and  
 2811 Finance or his designee, shall continue to be authorized by the board to maintain existing policies and  
 2812 implement new policies governing the management of University financial resources. These policies shall  
 2813 continue to (i) ensure compliance with generally accepted accounting principles; (ii) ensure consistency  
 2814 with the current accounting principles employed by the Commonwealth, including the use of fund  
 2815 accounting principles, with regard to the establishment of the underlying accounting records of the  
 2816 University and the allocation and utilization of resources within the accounting system, including the  
 2817 relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with  
 2818 regard to the allocation and proper use of funds from specific types of fund sources; (iii) provide  
 2819 adequate risk management and internal controls to protect and safeguard all financial resources,  
 2820 including moneys transferred to the University pursuant to a general fund appropriation; and (iv) ensure  
 2821 compliance with the requirements of the general appropriation act.

2822 The financial management system shall continue to include a financial reporting system to satisfy  
 2823 both the requirements for inclusion in the Commonwealth's Comprehensive Annual Financial Report, as  
 2824 specified in the related State Comptroller's Directives, and the University's separately audited financial  
 2825 statements. To ensure observance of limitations and restrictions placed on the use of the resources  
 2826 available to the University, the accounting and bookkeeping systems of the University shall continue to

2827 be maintained in accordance with the principles prescribed for governmental organizations by the  
2828 Governmental Accounting Standards Board.

2829 In addition, the financial management system shall continue to provide financial reporting for the  
2830 President of the University, acting through the Senior Vice President of Administration and Finance or  
2831 his designee, and the board of visitors to enable them to provide adequate oversight of the financial  
2832 operations of the University. The University shall provide to state agencies including, but not limited to,  
2833 the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and  
2834 Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for  
2835 Virginia and to the Chairmen of the Senate Committee on Finance and the House Committee on  
2836 Appropriations special reports as may be requested from time to time.

2837 VI. FINANCIAL MANAGEMENT POLICIES.

2838 The University has operated for many years at Level II and 2.5 as part of the Act. Accordingly, the  
2839 University currently operates a system of independent financial management policies guided by the  
2840 general principles contained in the Commonwealth's Accounting Policies and Procedures such as  
2841 establishing strong risk management and internal accounting controls to ensure University financial  
2842 resources are properly safeguarded and that appropriate stewardship of public funds is obtained  
2843 through management's oversight of the effective and efficient use of such funds in the performance of  
2844 University programs.

2845 The President of the University, acting through the Senior Vice President of Administration and  
2846 Finance or his designee, shall have the authority to create and implement any and all new financial  
2847 management policies necessary to maintain the University's current financial management system for the  
2848 continued effective protection and management of all University financial resources.

2849 Upon the effective date of its initial management agreement with the Commonwealth, the University  
2850 shall continue to follow its current independent financial management policies, as well as any new  
2851 policies that have been developed and submitted to the State Comptroller for review and comment as a  
2852 result of the management agreement. Any significant new policies developed after the effective date shall  
2853 be submitted to the State Comptroller for review and comment before being implemented by the  
2854 University.

2855 VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

2856 Pursuant to subsection C of § 23.1-206 of the Code of Virginia, the State Council of Higher  
2857 Education for Virginia (SCHEV) annually shall assess and certify to the Governor and the General  
2858 Assembly the degree to which each public institution of higher education of the Commonwealth has met  
2859 the financial and administrative management and education-related performance benchmarks called for  
2860 by that subsection and approved as part of the general appropriation act then in effect for the state  
2861 goals and objectives set forth in subdivisions A 1 through 12 of § 23.1-1002 of the Act. Each public  
2862 institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by  
2863 SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions  
2864 prescribed in subsection A of § 23.1-1002 of the Act, shall receive certain financial incentives, including  
2865 interest on the tuition and fees and other nongeneral fund education and general revenues deposited  
2866 into the State Treasury by the public institution of higher education. In order to be certified, the  
2867 University must meet all measures adopted prior to the effective date of this management agreement  
2868 pursuant to subdivision A 3 of § 23.1-1003 of the Act.

2869 The Commonwealth shall retain all funds related to general fund appropriations but shall pay these  
2870 funds to the University as specified in Section IX of this policy. The University is authorized to deposit  
2871 tuition, educational and general fees, research and sponsored program funds, auxiliary enterprise funds,  
2872 and all other nongeneral fund revenues weekly in the State Treasury pursuant to the state process in  
2873 place at the time of such deposit. The University shall be given any interest earned on auxiliary  
2874 balances on a monthly basis.

2875 The University also shall have sum sufficient appropriation authority for all nongeneral funds as  
2876 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations  
2877 process and shall report to the Department of Planning and Budget (i) its estimate of the nongeneral  
2878 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of  
2879 the two years in the next biennium by November 1 of each odd-numbered year and (ii) the estimate to  
2880 be included in the Budget Bill for the first and second year of the then-current biennium by November 1  
2881 of each even-numbered year.

2882 The board of visitors shall retain the authority to establish tuition, fee, room, board, and other  
2883 charges, with appropriate commitment provided to need-based grant aid for middle-income and  
2884 lower-income undergraduate Virginians. Except as provided otherwise in the general appropriation act  
2885 then in effect, it is the intent of the Commonwealth and the University that the University shall be  
2886 exempt from the revenue restrictions in the general provisions of the general appropriation act related  
2887 to nongeneral funds. In addition, unless prohibited by the general appropriation act then in effect, it is

2888 *the intent of the Commonwealth and the University that the University shall be entitled to retain*  
 2889 *nongeneral fund savings generated from changes in Commonwealth rates and charges, including but not*  
 2890 *limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications*  
 2891 *charges, and utility rates rather than reverting such savings back to the Commonwealth.*

2892 *For the receipt of general and nongeneral funds, the University shall conform to the Virginia*  
 2893 *Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia, as*  
 2894 *it currently exists and from time to time may be amended.*

2895 **VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.**

2896 *The President of the University, acting through the Senior Vice President of Administration and*  
 2897 *Finance or his designee, shall continue to be authorized to create and implement any and all accounts*  
 2898 *receivable management and collection policies as part of a system for the management of University*  
 2899 *financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection*  
 2900 *Act, Chapter 48 (§ 2.2-4800 et seq.) of Title 2.2 of the Code of Virginia, such that the University shall*  
 2901 *take all appropriate and cost-effective actions to aggressively collect accounts receivable in a timely*  
 2902 *manner.*

2903 *These actions shall include, but not be limited to, establishing the criteria for granting credit to*  
 2904 *University customers; establishing the nature and timing of collection procedures within the above*  
 2905 *general principles; and the independent authority to select and contract with collection agencies and,*  
 2906 *after consultation with the Office of the Attorney General, private attorneys as needed to perform any*  
 2907 *and all collection activities for all University accounts receivable such as reporting delinquent accounts*  
 2908 *to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions.*  
 2909 *In accordance with sound collection activities, the University shall continue to utilize the*  
 2910 *Commonwealth's debt set off collection programs and procedures, shall develop procedures acceptable*  
 2911 *to the Tax Commissioner and the State Comptroller to implement such programs, and shall provide a*  
 2912 *quarterly summary report of receivables to the Department of Accounts in accordance with the reporting*  
 2913 *procedures established pursuant to the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of*  
 2914 *Title 2.2 of the Code of Virginia.*

2915 **IX. DISBURSEMENT MANAGEMENT.**

2916 *The President of the University, acting through the Senior Vice President of Administration and*  
 2917 *Finance or his designee, shall continue to be authorized to create and implement any and all*  
 2918 *disbursement policies as part of a system for the management of University financial resources. The*  
 2919 *disbursement management policies shall continue to define the appropriate and reasonable uses of all*  
 2920 *funds, from whatever source derived, in the execution of the University's operations. These policies also*  
 2921 *shall continue to address the timing of appropriate and reasonable disbursements consistent with the*  
 2922 *Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's*  
 2923 *mission, including travel-related disbursements. Further, the University's disbursement policy shall*  
 2924 *continue to provide for the mechanisms by which payments are made including the use of charge cards,*  
 2925 *warrants, and electronic payments.*

2926 *The President of the University, acting through the Senior Vice President of Administration and*  
 2927 *Finance or his designee, is authorized to independently select, engage, and contract for such*  
 2928 *consultants, accountants, and financial experts, and other such providers of expert advice and*  
 2929 *consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may*  
 2930 *be necessary or desirable in his or her discretion. The University will continue to locally manage and*  
 2931 *administer the Commonwealth's credit card and cost recovery programs related to disbursements,*  
 2932 *subject to any restrictions contained in the Commonwealth's contracts governing those programs, as it*  
 2933 *has as part of its Level 2.5 authority.*

2934 *The disbursement policies shall ensure that adequate risk management and internal control*  
 2935 *procedures shall be maintained over previously decentralized processes for public records, payroll, and*  
 2936 *non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment*  
 2937 *reports to the Department of Accounts in accordance with the reporting procedures established pursuant*  
 2938 *to the Prompt Payment Act.*

2939 *The University has operated for many years at Level II and 2.5 as part of the Act. The University's*  
 2940 *disbursement policies shall continue to be guided by the principles of the Commonwealth's policies as*  
 2941 *included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the effective date, the*  
 2942 *University shall continue to follow its current disbursement policies, as well as any new disbursement*  
 2943 *policies that have been developed and submitted to the State Comptroller for review and comment as a*  
 2944 *result of the management agreement. Any significant new disbursement policies developed after the*  
 2945 *effective date shall be submitted to the State Comptroller for review and comment before being*  
 2946 *implemented by the University.*

2947 **X. DEBT MANAGEMENT.**

2948 *The University has a board of visitors-approved debt policy that defines the maximum percent of*  
 2949 *institutional resources that can be used to pay debt service in a fiscal year and the maximum amount of*



2950 *debt that can be prudently issued within a specific period. Annually, the board is provided a report on*  
 2951 *the University's debt-related activities. Any change in the debt policy shall be submitted to the State*  
 2952 *Treasurer for review and comment prior to their adoption by the University.*

2953 *The President of the University, acting through the Senior Vice President of Administration and*  
 2954 *Finance or his designee, shall continue to be authorized to create and implement any and all debt*  
 2955 *management policies as part of a system for the management of University financial resources.*

2956 *Pursuant to subsection C of § 23.1-1015 of the Act, the University shall have the authority to issue*  
 2957 *bonds, notes, or other obligations that do not constitute state tax-supported debt, as determined by the*  
 2958 *Treasury Board, and that are consistent with debt capacity and management policies and guidelines*  
 2959 *established by its board of visitors, without obtaining the consent of any legislative body, elected*  
 2960 *official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and*  
 2961 *without any proceedings or conditions other than those specifically required by Article 4 of the Act,*  
 2962 *provided, however, that the University shall notify the State Treasurer of its intention to issue bonds*  
 2963 *pursuant to this policy at the time it adopts the bond issuance planning schedule for those bonds. Any*  
 2964 *new or revised debt capacity and management policy shall be submitted to the State Treasurer for*  
 2965 *review and comment prior to its adoption by the University.*

2966 *The University recognizes that there are numerous types of financing structures and funding sources*  
 2967 *available, each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by*  
 2968 *the President of the University, acting through the Senior Vice President of Administration and Finance*  
 2969 *or his designee, within the context of the overall portfolio to ensure that any financial product or*  
 2970 *structure is consistent with the University's objectives. Regardless of the financing structure(s) utilized,*  
 2971 *the President of the University, acting through the Senior Vice President of Administration and Finance*  
 2972 *or his designee, shall obtain sufficient documentation to gain a full understanding of the transaction,*  
 2973 *including (i) the identification of potential risks and benefits and (ii) an analysis of the impact on*  
 2974 *University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the*  
 2975 *provisions of §§ 23.1-1014 and 23.1-1015 of the Act shall be authorized by resolution of the board of*  
 2976 *visitors, providing that they do not constitute state tax-supported debt.*

2977 **XI. INVESTMENT POLICY.**

2978 *It is the policy of the University to invest public funds in a manner that will provide the highest*  
 2979 *investment return with the maximum security while meeting the daily cash flow demands of the entity*  
 2980 *and conforming to all statutes governing the investment of public funds. Investments shall be made with*  
 2981 *the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person in*  
 2982 *a like capacity and familiar with such matters would use in the conduct of an enterprise of a like*  
 2983 *character and with like aims. This policy conforms with the Investment of Public Funds Act, Chapter 45*  
 2984 *(§ 2.2-4500 et seq.) of Title 2.2 of the Code of Virginia.*

2985 *Endowment investments, if any, shall be invested and managed in accordance with the Uniform*  
 2986 *Prudent Management of Institutional Funds Act, Chapter 11 (§ 64.2-1100 et seq.) of Title 64.2 of the*  
 2987 *Code of Virginia.*

2988 *The University is charged with the responsibility of reporting to the board of visitors on an annual*  
 2989 *basis.*

2990 **XII. INSURANCE AND RISK MANAGEMENT.**

2991 *By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any*  
 2992 *intent during the next biennium to withdraw from any insurance or risk management program made*  
 2993 *available to the University through the Commonwealth's Division of Risk Management and in which the*  
 2994 *University is then participating, to enable the Commonwealth to complete an adverse selection analysis*  
 2995 *of any such decision and to determine the additional costs to the Commonwealth that would result from*  
 2996 *any such withdrawal. If, upon notice of such additional costs to the Commonwealth, the University*  
 2997 *proceeds to withdraw from the insurance or risk management program, the University shall reimburse*  
 2998 *the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the*  
 2999 *Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University*  
 3000 *and the Commonwealth.*

3001 **2. That notwithstanding the provisions of subsections A and B of § 23.1-1007 of the Code of**  
 3002 **Virginia, the management agreement negotiated by James Madison University (the University)**  
 3003 **shall continue in effect unless the Governor, the General Assembly, or the University determine**  
 3004 **that the management agreement needs to be renegotiated or revised.**