

## ARTICULATION AGREEMENT

**THIS AGREEMENT** is made this 3rd day of August, 1992, by and between The Visitors of Longwood University (the "Visitors") on behalf of Longwood University (the "University"), and Directors of the Longwood University Foundation, Inc., a Virginia non-stock, non-profit corporation (the "Foundation");

### WITNESSETH:

**WHEREAS**, the Foundation was formed to receive, administer and distribute funds and property of all kinds exclusively in furtherance of the educational activities and objectives of the University; and

**WHEREAS**, the Visitors and the Foundation desire to set forth certain terms and conditions of their relationship; and

**WHEREAS**, the execution of this Agreement has been authorized by resolution of the Visitors of Longwood University (the "Visitors") and the Directors of the Longwood University Foundation, Inc. (the "Directors");

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and undertakings hereinafter described, the Visitors and the Foundation hereby agree as follows:

1. **University Commitment.**

The University acknowledges and is grateful for the vital services performed by the Foundation in fostering the image of the institution and in attracting resources to support and enhance the capabilities of the University. The Board of Visitors and officers of the University will provide a detailed overview of the University each year to include major priorities for the academic year and review policy and strategy adjustments as they occur.

2. **University Officers as Directors.**

Article III, Section 4 of the Foundation's Bylaws requires in part that the University's President or acting President and Vice President for University Advancement shall serve in such office with no power to vote; the Rector of the Board of Visitors of Longwood University and member of the Visitors appointed as Official Liaison to the Foundation shall serve as Directors of the Foundation. In recognition of the benefits derived from a close working relationship between the Foundation and the University, the Foundation agrees, during the term of this contract, to consult with the President of the University and the Rector of the Board of Visitors of the University, prior to amending the above-described provision of Article III, Section 4, of its Bylaws.

3. **Fund-Raising Activities.**

The Foundation shall conduct all fund-raising activities in accordance with the University Development Policy and Matching Gift Administration Policy, as such policies may be amended from time to time. The University shall provide the Foundation with copies of its Development Policy and Matching Gift Administration Policy and all current and subsequent amendments thereto. Additionally, the Foundation shall

coordinate all fund-raising activities with the University's Vice President for University Advancement.

4. **Financial Reporting, Audits and Information**

The Foundation shall provide the Board of Visitors the following reports, audits and information on a quarterly basis:

- (a) A copy of any proposed repeal, amendment or addition to the Foundation's Articles of Incorporation or Bylaws or Articulation Agreement.
- (b) A current listing of the names and occupations of all Directors and officers;
- (c) A written description of any compensation paid to anyone and the amount thereof (except expense reimbursement);
- (d) A written description of all private gifts and contributions received for the University's benefit, and a written description of any restrictions or conditions attached thereto (the identity of the donor is desirable but not necessary);
- (e) A copy of the Foundation's annual audited financial statement including a description of all expenditures by program;
- (f) A schedule of all investments and those under consideration, including real estate (**e.g.**, names and locations of deposits, account numbers, and the like);
- (g) A copy of the investment guidelines approved by the Board of Directors that are used as formal instructions to money management organizations employed by the Foundation;
- (h) A schedule of all private firms responsible for the daily management of the Foundation's investments and fees charged therefore if any;
- (i) Written notice of litigation, or threat of litigation brought by or against the Foundation;
- (j) Written notice of any audit or review by tax authorities, or action taken, or threatened to be taken by any such authorities, that may adversely affect the tax-exempt status of the Foundation;
- (k) Written notice of any proposed capital expenditure in excess of \$25,000;
- (l) A copy of the Foundation's annual IRS Forms 990 and 990T (if applicable);
- (m) An annual schedule of any compensation, prize or award paid to any University employee or a member of such employee's "immediate family," as that term is defined in Section 2.1-639.2 of the Code of Virginia, whether in cash or in-kind.

5. **Transfer of Funds**

In all written memoranda of agreement involving the transfer of funds from the University to the Foundation, such document shall specifically provide for the distribution of any earnings from such transferred funds and shall direct the distribution of the principal at the end of the agreement. All funds shall be managed in accordance with the law and University policies and directives.

The Foundation agrees that it will not transfer or loan funds to any University personnel, school or department, except upon the prior written request and approval of the President of the University. The Foundation agrees that it will not transfer or loan funds to the capital outlay or operations of the University except upon the written request of the President of the University and the prior consent of the Virginia General Assembly.

6. **Foundation's Representation to Third Parties.**

- (a) The Foundation shall neither represent to any third party, nor take any other action which would cause a third party to believe, that the Foundation is part of, controlled by, or acting as an agent of the University.
- (b) The Foundation's activities shall be conducted in a manner to reasonably ensure that third parties understand that the Foundation is not part of, controlled by, or acting as an agent of the University.
- (c) The Foundation shall not offer post-secondary courses, seminars, workshops or similar instruction, whether or not for credit, using the name of the University or any of its Universitys or departments.
- (d) In all fund raising activities the Foundation will affirmatively represent that it is not an agency of the Commonwealth of Virginia.

7. **Foundation's Debts, Liabilities and Obligations.**

- (a) The Commonwealth of Virginia and the University shall not be liable for any of the Foundation's contracts, torts, or other acts or omissions of its trustees, officers, staff or activity participants. The Foundation agrees to indemnify and save the University harmless from any claims, suits or demands made upon the University, arising out of any activity, act, or failure to act, whether in contract or in tort, by the Foundation, its Visitors, officers, staff or activity participants.
- (b) The Commonwealth of Virginia and the University have not provided, and shall have no obligation to provide, insurance coverage of any type for the Foundation or its Directors, officers, staff or activity participants.
- (c) The Commonwealth of Virginia and the University shall have no obligation to provide any legal defense for the Foundation, or its Directors, officers, staff or activity participants in the event of any claim against any of them.

8. **Non-Discrimination.**

The Foundation shall not discriminate on the basis of race, color, religion, national origin, handicap, sex or age.

9. **Taxes.**

The Foundation shall not use the University taxpayer's identification number or the University's tax-exempt status in connection with purchases and/or sales by the Foundation, gifts to the Foundation, interest or other income of the Foundation, or for any other activity of the Foundation whatsoever.

10. **License for Use of the University's Name and Symbols.**

For the term of this contract, the University expressly grants the Foundation a non-exclusive right and license to use the University's name in the name of the Foundation. The Foundation agrees to use the University's name and symbols only in an appropriate manner, and it shall seek the prior written approval of the University's Vice President for University Advancement prior to any use of the University's symbols or trademarks.

11. **Use of University Facilities.**

The Foundation shall be eligible to use University facilities subject to availability and the policies and procedures of the University applicable to such facilities. If it is anticipated that the Foundation's use of a University facility will exceed thirty (30) consecutive days, the Foundation and the University shall enter into a written arm's-length agreement with respect to the facility, setting forth the rate the University will charge the Foundation for use of the facility and such other terms and conditions as may be appropriate to the particular facility.

12. **Use of University Services.**

The Foundation shall be eligible to use the central services provided to the University community, including those services provided by the departments of Dining Services, the Print Shop, Public Safety and Physical Plant. The Foundation and the University shall enter into a written arm's-length service agreement setting forth the rate that the University will charge the Foundation for central services and such other terms and conditions as the University and the Foundation shall deem appropriate. To the extent that the University has established a rate for a particular service in a published rate schedule, that rate shall be used in the service agreement. In the absence of a published rate schedule for a particular service, the service agreement shall set forth an arm's-length rate based on the University's cost to provide such service to the Foundation, including a reasonable allocation of overhead expenses.

13. **Use of University Employees.**

The Foundation and the University shall enter into a written arm's-length services reimbursement agreement with respect to the calculation of the amounts to be paid by the Foundation to the University for the provision of services by University employees to the Foundation.

14. **Term of Agreement.**

This Agreement shall become effective as of the date first above written and shall remain in effect until terminated as provided in paragraph 15.

15. **Termination.**

Either party may terminate this Agreement, for any reason, upon at least one hundred and twenty (120) days prior written notice to the other party.

16. **Amendment.**

This Agreement may not be amended or altered without the written consent of the parties hereto.

17. **Notices.**

Any notices or other communications required or permitted to be sent under this Agreement shall be sufficient if sent by registered mail, postage prepaid, to the address set forth below or such other address as a party may specify in writing:

To the Foundation:

President  
Longwood University Foundation, Inc.  
201 High Street  
Farmville, VA 23909-1895

To the Board of Visitors  
and/or the University:

President  
Longwood University  
201 High Street  
Farmville, VA 23909

18. **Governing Law.**

This Agreement shall be governed by the laws of the Commonwealth of Virginia.

19. **Counterparts.**

This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their authorized officers as of the date first above written.

LONGWOOD UNIVERSITY FOUNDATION, INC.

By: \_\_\_\_\_

Name  
President

VISITORS OF LONGWOOD UNIVERSITY

By: \_\_\_\_\_

Name  
Rector

2/96

8/97

9/97

10/97

\* 7/02 Name changed from College to University.