Chapter 14

Office of the Attorney General

14.0 Office of the Attorney General

Occasionally a contract must be submitted to the Office of the Attorney General for review and approval. Keep in mind that, while legal counsel may be able to clarify meaning, or redraft an agreement so that the terms are legally permitted, counsel’s role is not to review or approve your underlying business judgments. By law in Virginia, the General Assembly places this discretion in the sound judgment of the University’s officials. It is incorrect to assume that a contract approved for legal sufficiency removes economic risk or the individual’s authority and duty to responsibly weigh risk against benefit.

14.2 Procedure to submit a contract or agreement to the Office of the Attorney General.

All contracts or agreements that require review of the University’s representative in the Office of the Attorney General must first be submitted to the Division Head in the respective area in the University.

14.3 Forbidden Contract Provisions. The Office of the Attorney General provided the following summary of forbidden contract provisions.

1. Requiring the Commonwealth to maintain any type of insurance for its benefit or for the contractor’s benefit.

2. Requiring or stating that the terms of any contractor’s form agreement shall prevail over the terms of the Commonwealth’s terms.

3. Requiring the Commonwealth to defend, indemnify or hold harmless the contractor or any person or entity.

4. Imposing interest charges contrary to that specified by the Code of Virginia or imposing interest for any period prior to the receipt of contractor’s invoice for payment.

5. Except in the case of agencies of the government of the United States, choosing any body of law, except the law of the Commonwealth, as the governing law of the contract.

6. Permitting unilateral modifications of any contract by the contractor.

7. Binding the Commonwealth to any arbitration or to the decision of any arbitration board, commission, panel or other entity except a court of competent jurisdiction
located in the Commonwealth.

8. Obligating the Commonwealth to pay costs of collection or attorney’s fees.

9. Limiting the lawful remedies of the Commonwealth to seek enforcement or redress for any violation of statutory, regulatory or common law.

10. Providing a different statute of limitations other than that provided by the laws of Virginia.

11. Limiting the authority/responsibility of the Attorney General of Virginia as set forth in the statutes of Virginia, (specifically §§ 2.2-500 Et. Seq. Of the Code of Virginia), or any other official of the Commonwealth of Virginia.

12. Prohibiting the Commonwealth from recovering its lawful damages directly incurred as a result of any breach of contract. The Commonwealth and the contractor may agree to limit or eliminate liability for consequential or indirect damages.

13. Imposing any liability or responsibility on the Commonwealth contrary to the laws of Virginia.

14. Releasing the contractor or any other entity or person from its legal liability for unlawful or negligent conduct or failure to comply with any duty recognized or imposed by applicable law.

15. Imposing any obligation on the Commonwealth as a result of any promise, representation or statement by anyone without the authority to do so.

16. Waiving, directly or indirectly, the sovereign immunity of the Commonwealth of Virginia.