

## **Resolution on University Lines of Credit**

### **FINANCE AND RESOURCE MANAGEMENT COMMITTEE**

**May 5, 2018**

Consistent with the trend at many major research institutions, the university has developed, and is in the process of implementing, an updated cash management strategy to leverage limited resources. This is accomplished through the investing of additional university operating reserves in the Virginia Tech Foundation's (Foundation) endowment program. While this should result in achieving enhanced investment returns over time, it will also result in maintaining a reduced amount of operating reserves. A representative workgroup comprising of personnel from the Budget Office, Controller's Office, and Investment and Debt Management identified the appropriate level of cash reserves to invest and concluded that a back-up operating line of credit would be needed to completely implement the new investment strategy. A line of credit is a common cash management tool utilized in many corporate operations. The workgroup examined the current and projected cash flows and determined that \$185 million of external liquidity would be needed, based on the university's FY 2018 annual budget. The plan results in the generation of enhanced investment income that will help advance university strategic needs, while reducing the need for tuition and fee increases.

While the university believes that it will be able to operate throughout the year with its planned internal reserves, it recognizes the possibility that a major demand on cash could occur unexpectedly and rapidly. If such an event did occur, this line of credit will provide time for the university to access its longer-termed investments at the Foundation. Once the cash management strategy is fully implemented, the annual low point of the university's seasonal cash flow cycles is anticipated to be approximately \$185 million, which equates to roughly 45 days of highly liquid operating reserves. Management determined that it would be in its best interest to target approximately 90 days of reserve liquidity through a combination of internal operating reserves and two or more external bank lines of credit. Accordingly, three bank line of credit providers have been identified to provide loans for up to \$200 million of liquidity in aggregate, which should provide enough flexibility to obtain approximately 45 days of liquidity based in the university's estimated FY 2019 budget. The external liquidity, when combined with the university's operating reserves, will provide approximately 90 days of highly liquid cash reserves.

Board approval is needed for the establishment and access to the lines of credit. Upon approval of the lines of credit, the university will be authorized to draw upon the lines of credit, as needed. The lines will be (a) revolving lines of credit, the principal amount of which may be borrowed, repaid, and re-borrowed, and (b) secured by the university's

general revenue pledge, and not considered debt of the Commonwealth of Virginia, either legal, moral, or otherwise. McGuireWoods serves as university bond counsel.

Under the terms of the resolution, the university will enter into one or more credit agreements that set forth the terms and conditions of the applicable line of credit, in substantially the form provided to the Board. The Board's approval will (a) authorize the lines of credit for an aggregate amount of up to \$200 million, (b) approve the terms of the bank proposals and the form of the credit agreement, which includes a form promissory note, (c) identify the President, Chief Financial Officer, and University Treasurer as authorized officers to negotiate, execute and deliver all necessary documents related to the credit lines, and (d) authorize the authorized officers to enter into extensions of and amendments to the lines of credit and new lines of credit with other financial institutions from time to time, so long as such extensions and amendments and new lines of credit are not inconsistent with the intent of this resolution and the aggregate principal amount of the lines of credit does not exceed the greater of \$200 million or 45 days of university operating expenditures based on the then Board-approved operating budget.

The university will review its liquidity profile at least annually to determine if its liquidity target and/or bank allocations require rebalancing.

## Resolution on University Lines of Credit

### FINANCE AND RESOURCE MANAGEMENT COMMITTEE

May 5, 2018

**WHEREAS**, Chapter 26, Title 23.1 of the Code of Virginia of 1950, as amended (the "Virginia Code"), establishes a public corporation under the name and style of Virginia Polytechnic Institute and State University (the "University") which is governed by a Board of Visitors (the "Board"); and

**WHEREAS**, by Chapter 10, Title 23.1 of the Virginia Code (the "Act"), the University entered into a management agreement with the Commonwealth of Virginia, which was enacted as Chapter 1 of Chapter 933 of the 2006 Virginia Acts of Assembly, as amended, pursuant to which the University is (a) classified as a public institution of higher education and (b) granted the authority, pursuant to the Act, to issue bonds, notes, or other obligations that are consistent with debt capacity and management policies and guidelines established by the Board and without (i) obtaining the consent of any legislative body, elected official, commission, board, bureau, political subdivision, or agency of the Commonwealth, (ii) the approval required by the provisions of Article 8 of Chapter 24 of Title 2.2 of the Virginia Code, or (iii) any regulation or procedure, including a review or approval procedure, adopted pursuant to Chapter 11 of Title 23.1 of the Virginia Code; and

**WHEREAS**, the Act further authorizes the University to provide for the payment of the principal of and the interest on such bonds, notes, or other obligations from any one or more of the following sources: (a) its revenues generally; (b) income and revenues derived from the operation, sale, or lease of a particular project or projects, whether or not they are financed or refinanced from the proceeds of such bonds, notes, or other obligations; (c) funds realized from the enforcement of security interests or other liens or obligations securing such bonds, notes, or other obligations; (d) proceeds from the sale of bonds, notes, or other obligations; (e) payments under letters of credit, policies of municipal bond insurance, guarantees, or other credit enhancements; (f) any reserve or sinking funds created to secure such payment; (g) accounts receivable of the University; or (h) other available funds of the University; and

**WHEREAS**, the University has determined that it would be in the best interest of the University to enter into one or more lines of credit (the "Lines of Credit") as a source of liquidity to support the general operations of the University; and

**WHEREAS**, it is anticipated that the Lines of Credit will (a) be revolving lines of credit, the principal amount of which may be borrowed, repaid, and re-borrowed and (b) be secured by the University's general revenue pledge and not be in any way a debt of the Commonwealth of Virginia (the "Commonwealth") and shall not create or constitute any indebtedness or obligation of the Commonwealth, either legal, moral, or otherwise; and

**WHEREAS**, the University has solicited proposals from various financial institutions to provide the Lines of Credit, including proposals from Branch Banking and Trust Company, The First Bank and Trust Company, and Wells Fargo Bank, National Association (collectively, the "Proposals"), the terms of which Proposals were presented to the Board; and

**WHEREAS**, under the terms of the Proposals, the University will enter into one or more credit agreements or similar agreements that set forth the terms and conditions of the applicable Line of Credit, in substantially the form presented to the Board (each a "Credit Agreement"); and

**WHEREAS**, to evidence its obligations under a Credit Agreement, the University will execute a promissory note in favor of the applicable financial institution, in substantially the form attached as an exhibit to the applicable Credit Agreement (each a "Note"); and

**WHEREAS**, the Board intends (a) to authorize the Lines of Credit, (b) approve the terms of the Proposals, the form of the Credit Agreement, which includes a form of the Note, and (c) take such other actions as are authorized in this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY:**

**1. Authorization of Credit.** For the purpose of providing a source of back-up liquidity to support the general operations of the University, the Board authorizes the Lines of Credit in an aggregate principal amount of up to \$200,000,000. The Lines of Credit shall bear interest on a taxable basis, and the payment of principal of and interest on the Lines of Credit shall be from one or more of the sources authorized by the Act, all as more particularly described in the applicable Proposal and Credit Agreement. The Board hereby approves the terms of the Proposals, the form of the Credit Agreement and the form of the Note.

**2. Delegation and Execution.** The Board authorizes the President of the University, the Chief Financial Officer of the University, or the University Treasurer (collectively, the "Authorized Officers") to negotiate, execute, and deliver all certificates, documents, and instruments related to the Lines of Credit with one or more financial institutions; provided that the initial closing of all such Lines of Credit must occur on or before January 31, 2019. The final approval of the terms and conditions of the Lines of Credit and the final selection of the financial institutions shall be evidenced by the execution and delivery of the Credit Agreements by one or more Authorized Officers. The Board authorizes all University officers and staff to take such other actions as may be necessary or desirable in connection with entering into and maintaining the Lines of Credit. The Board authorizes the Authorized Officers to enter into extensions of and amendments to the Lines of Credit and new Lines of Credit with other financial institutions from time to time (including to increase the aggregate principal amount thereof), so long as such extensions and amendments and new Lines of Credit are not inconsistent with the intent of this Resolution and the aggregate principal amount of the Lines of Credit does not exceed the greater of

(1) the amount authorized in paragraph (1) and (2) 45 days of operating expenditures of the University, based on the then Board-approved operating budget.

**3. Other Acts.** All other acts of the Authorized Officers and other officers and staff of the University that are in conformity with the purpose and intent of this Resolution are hereby approved, ratified and confirmed.

**4. Not a Debt of the Commonwealth.** The Lines of Credit shall not be in any way a debt of the Commonwealth and shall not create or constitute any indebtedness or obligation of the Commonwealth, either legal, moral, or otherwise.

**5. Effective Date.** This Resolution shall take effect immediately upon adoption.

**RECOMMENDATION:**

That the resolution identifying the authorized officers; approving the terms of the proposals and the form of the credit agreement; authorizing the authorized officers to enter into extensions of, and amendments to, the lines of credit and new lines of credit so long as such extensions and amendments and new lines of credit are consistent with the intent of this resolution and do not exceed the greater of \$200 million or 45 days of operating expenditures, be approved.

June 4, 2018

# LINES OF CREDIT -PROPOSALS

<b>Bank Name:</b>	Wells Fargo
<b>Term:</b>	1, 2 or 3
<b>Facility Amount:</b>	Up to \$75M
<b>Undrawn Fee:</b>	
<b>1 year term</b>	13 basis points
<b>2 year term</b>	14 basis points
<b>3 year term</b>	15 basis points
<b>Interest Rate (spread in basis points to 1-month LIBOR):</b>	
<b>1 year term</b>	24 basis points
<b>2 year term</b>	30 basis points
<b>3 year term</b>	32 basis points
<b>Term-Out Period:</b>	Three years
<b>Terms:</b>	Six months interest only and a 2.5 year term loan
<b>Rates:</b>	1. Base Rate for 6 month interest only is the greater of: - The Bank's prime rate plus 1%, - The Federal Funds rate plus 2.0%, or - 7%  2. Amortized 2.5 year term loan rate: - Base Rate plus 1.00%  3. Default Rate: - Base Rate plus 3.00%

<b>Bank Name:</b>	BB&T
<b>Term:</b>	1, 2 or 3
<b>Facility Amount:</b>	Up to \$95M
<b>Undrawn Fee:</b>	
<b>1 year term</b>	7.5 basis points
<b>2 year term</b>	7.5 basis points
<b>3 year term</b>	7.5 basis points
<b>Interest Rate (spread in basis points to 1-month LIBOR):</b>	
<b>1 year term</b>	45 basis points
<b>2 year term</b>	45 basis points
<b>3 year term</b>	45 basis points
<b>Term-Out Period:</b>	Three years
<b>Terms:</b>	Six months interest only and a 2.5 year term loan
<b>Rates:</b>	1. Base Rate for 6 month interest only is the greater of: - The Bank's prime rate plus 1%, - The Federal Funds rate plus 2.0%, or - 7%  2. Amortized 2.5 year term loan rate: - Base Rate plus 1.00%  3. Default Rate: - Base Rate plus 3.00%

<b>Bank Name:</b>	The First Bank & Trust Company
<b>Term:</b>	1, 2, 3 or 4
<b>Facility Amount:</b>	Up to \$30M
<b>Undrawn Fee:</b>	
<b>1 year term</b>	None
<b>2 year term</b>	None
<b>3 year term</b>	None
<b>4 year term</b>	None
<b>Interest Rate (spread in basis points to 1-month LIBOR):</b>	
<b>1 year term</b>	225 basis points
<b>2 year term</b>	225 basis points
<b>3 year term</b>	225 basis points
<b>4 year term</b>	225 basis points
<b>Term-Out Period:</b>	None

REVOLVING CREDIT AGREEMENT

Dated as of \_\_\_\_\_, 2018

By and Between

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

and

[LENDER NAME]

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Exhibit A – Form of Promissory Note

Exhibit B – Form of Request for Advances

Exhibit C – Form of Request for Termination or Reduction

Exhibit D – Form of Request for Extension of Scheduled Expiration Date

Exhibit E – Form of Notice of Extension of Scheduled Expiration Date

## REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 2018, by and between VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, an educational institution established by the Commonwealth of Virginia as a public body and governmental instrumentality for the dissemination of education (the "University"), and [LENDER NAME], a national banking association (together with its successors or assigns the "Bank").

WHEREAS, the University has applied to the Bank for a revolving line of credit in the maximum principal amount of \$\_\_\_\_\_ (as more particularly described herein, the "Facility"), advances under which will be used by the University for working capital, for general corporate and operating purposes, and for any other lawful purpose; and

WHEREAS, the University and the Bank intend that the Facility will be governed by the terms and subject to the conditions contained herein.

NOW, THEREFORE, in consideration of the covenants herein, the University and the Bank hereby agree as follows:

### ARTICLE I DEFINITIONS

#### Section 1.1. Definitions.

In addition to terms defined above or elsewhere in this Agreement, the following terms shall have the following meanings unless otherwise expressly indicated, or unless the context clearly requires otherwise:

"Act" means Chapter 10, Title 23.1 of the Code of Virginia of 1950, as amended.

"Advance" means an advance under the Facility made pursuant to the terms of Section 2.2, and shall include the Liquidity Draw made pursuant to the terms of Section 2.5(b).

"Advance Date" means any date on which the Bank makes an Advance as described in Section 2.3.

"Applicable Interest Rate" means (a) with respect to each Advance (other than the Liquidity Draw), a per annum rate equal to LIBOR plus the Applicable Margin, with such rate to change (i) on the first day of each LIBOR Period with each change in LIBOR, and (ii) with each change in the Applicable Margin, and (b) with respect to the Liquidity Draw, the Liquidity Rate.

"Applicable Margin" means, initially, \_\_\_\_\_ basis points per annum.

"Authorized Officer" means the University Treasurer, the Assistant Treasurer, the Assistant Vice President for Finance and University Controller, or any functionally equivalent successor position to any of the aforementioned University positions but which bears a different title, or any other person authorized by resolution of the University to act as an Authorized Officer hereunder and for which a written certificate has been furnished to the Bank containing the specimen signature of such person.

"Available Commitment" means initially \$\_\_\_\_\_, and thereafter shall mean such amount adjusted from time to time as follows: (i) downward by the amount of any reduction of the Available Commitment pursuant to Section 3.4; (ii) downward by the principal amount of any Advance made by the Bank pursuant to Section 2.2; and (iii) upward by the principal amount of any Advance repaid to the Bank pursuant to Section 2.5; provided, that in no event shall the Available Commitment exceed \$\_\_\_\_\_. Any adjustment pursuant to clause (i), (ii) or (iii) above shall occur simultaneously with the event requiring such adjustment.

"Bond Ratings" means the long-term credit ratings assigned from time to time to the University's unenhanced General Revenue Obligations by each of the Rating Agencies. The Bond Ratings will change as of the date of any change in such long-term credit ratings.

"Business Day" means any day other than a Saturday, Sunday or a day on which banking institutions in the Commonwealth or the State of New York are closed.

"Claw Back Amount" means, for any period during which a payment obligation hereunder or under the Note bears interest at a rate in excess of the Maximum Rate, an amount equal to the difference between the amount of interest the Bank would have received hereunder or under the Note during such period, without regard to the limitations imposed by the Maximum Rate, and the amount of interest actually payable to the Bank at the Maximum Rate during such period.

"Commitment Period" means the period from and including the Effective Date to and including the Expiration Date.

"Commonwealth" means the Commonwealth of Virginia.

"Debt" means, with respect to any Person, without duplication, (i) all general obligations of such Person for borrowed money and reimbursement general obligations which are not contingent, (ii) all general obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services which purchase price is due twelve months or more from the date of incurrence of the obligation in respect thereof, (iv) all obligations of such Person as lessee under capital leases, (v) all payment obligations of such Person, in addition to any obligations set forth in clauses (i) through (iv) above, arising under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate futures contract, interest rate option contract or other similar arrangement and under any foreign exchange contract, currency swap agreement,

foreign exchange futures contract, foreign exchange option contract, synthetic cap or other similar agreement, and (vi) all payment obligations set forth in clauses (i) through (v) above of any third party which are Guaranteed by such Person; provided, however, that the term "Debt" shall not include contingent obligations of any Person to reimburse the provider of any surety bonds or letters of credit to the extent that such surety bonds or letters of credit support obligations of such Person that would otherwise be included in the term "Debt" under clauses (i) through (v) above.

"Debt Instrument" and "Debt Instruments" have the meanings assigned to such terms in Section 5.1(d).

"Default" means any event or condition which constitutes an Event of Default or which with the giving of notice or the lapse of time, or both, would, unless cured or waived, become an Event of Default.

"Default Rate" means a per annum rate equal to the rate of interest otherwise applicable to Advances hereunder plus \_\_\_\_\_ basis points.

"Dollars" or the sign "\$" means dollars in the lawful currency of the United States of America.

"Effective Date" has the meaning set forth in Section 4.1.

"Event of Default" has the meaning set forth in Section 7.1.

"Expiration Date" means the earliest to occur of (i) the Scheduled Expiration Date, (ii) the date on which the University terminates this Agreement pursuant to Section 3.4(b), and (iii) the date on which the Bank terminates its obligation to make Advances under the Facility pursuant to Section 7.2(a).

"Facility" means the obligation of the Bank to make Advances which in the aggregate at any one time will not exceed the Available Commitment.

"Fee Letter" means the Fee Letter dated of even date herewith between the Bank and the University regarding the payment of certain fees in connection with the Facility, as the same may be amended, restated, replaced or otherwise modified from time to time.

"Fitch" means Fitch, Inc. and its successors.

"GAAP" means generally accepted accounting principles applicable to governmental colleges and universities, as promulgated by the Governmental Accounting Standards Board from time to time.

"General Revenue Obligations" means Debt of the University to which the General Revenues of the University are pledged.

"General Revenues" has the meaning set forth in Section 3.6.

"Guarantee" means, with respect to any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (iii) with respect to any letter of credit issued for the account of such other Person or as to which such other Person is otherwise liable for reimbursement of drawings; provided, that the term "Guarantee" shall not include (1) endorsements for collection or deposit in the ordinary course of business, or (2) performance or completion guarantees. The term "Guarantee" used as a verb has a corresponding meaning.

"LIBOR" means [Lender specific definition to be included].

"LIBOR Period" [Lender specific definition to be included].

"Lien" means, with respect to any asset, (i) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (ii) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Liquidity Draw" has the meaning given to it in Section 2.5(b).

"Liquidity Rate" means [Lender specific definition to be included].

"London Business Day" means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

"Material Adverse Effect" means any material adverse effect on (i) the properties, assets, condition (financial or otherwise), results of operations or prospects of the University taken as a whole, or (ii) the ability of the University to perform its obligations under this Agreement or the Note.

"Maximum Rate" means the maximum rate of interest payable by the University on any repayment obligation pursuant to the laws of the Commonwealth.

"Moody's" means Moody's Investors Service, Inc. and its successors.

"Note" means the promissory note of the University issued pursuant to this Agreement, substantially in the form of Exhibit A hereto, which evidences the obligation of the University to repay Advances made under the Facility, as the same may be amended, restated, replaced or otherwise modified from time to time.

"Participant" means any bank or other financial institution to which the Bank has granted a participation in the Bank's commitment to make Advances, pursuant to a Participation Agreement; provided, however, any such Participant shall take such participation subject to the terms of this Agreement.

"Participation Agreement" means any Participation Agreement between the Bank and a Participant, as described in accordance with Section 8.5 of this Agreement.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001), as amended, or any successor statute.

"Person" means an individual, a corporation, a partnership, a limited liability company, an association, a trust, a government, a political subdivision, a governmental agency or instrumentality or any other entity or organization.

"Rating Agencies" means, collectively, Moody's, S&P and Fitch.

"Request for Advance" means a written request for an Advance in substantially the form of Exhibit B.

"Sanctions" has the meaning set forth in Section 5.1(m).

"Scheduled Expiration Date" means \_\_\_\_\_, 20\_\_\_, as such date may be extended pursuant to Section 3.5.

"S&P" means S&P Global Ratings and its successors.

"Taxes" has the meaning set forth in Section 3.3.

#### Section 1.2. Accounting Terms and Determinations.

Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied on a basis consistent (except for changes approved by the Auditor of Public Accounts of the Commonwealth) with the most recent financial statements of the University delivered to the Bank.

#### Section 1.3. Rules of Construction.

When used in this Agreement:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) the use of the word "or" is not exclusive;
- (iii) a reference to a law includes any amendment or modification of such law;

(iv) a reference to a person includes its permitted successors and permitted assigns;

(v) a reference to an agreement, instrument or document shall include such agreement, instrument or document as the same may have been and may from time to time be amended, modified or supplemented in accordance with its terms and as permitted hereby;

(vi) a reference to an Article, Section, paragraph or Exhibit shall mean a reference to an Article, Section or paragraph hereof or Exhibit hereto, unless the context expressly requires otherwise; and

(vii) a reference to "herein" or "hereof" shall mean in or of this Agreement.

## ARTICLE II THE FACILITY

### Section 2.1. General.

Upon the terms and subject to the conditions of this Agreement, the Bank agrees to make the Facility available to the University during the Commitment Period.

### Section 2.2. Advances by the Bank.

The Bank agrees to make one or more advances (each an "Advance") to the University on any Business Day during the Commitment Period; provided, however, that the principal amount to be advanced at any time does not exceed the Available Commitment at such time. Within the limits specified above, the University may request Advances, repay Advances and request further Advances under the Facility. Subject to Section 2.5(b), each Advance shall be due and payable in full on the Expiration Date.

### Section 2.3. Procedure for Requesting Advances.

The University shall give written notice (in the form of a Request for Advance), which may be delivered by facsimile, and telephonic notice to the Bank not later than 11:00 a.m. (New York, New York time) on the proposed date an Advance is to be made (each such date, an "Advance Date"), specifying the principal amount of the proposed Advance and the proposed Advance Date. Upon receipt of a timely Request for Advance by the Bank from the University, the Bank, subject to the terms and conditions of Section 4.2, shall advance to the University or its designee by 3:00 p.m. (New York, New York time) on the Advance Date the amount requested in such Request for Advance, which amount shall not exceed the Available Commitment on such date, after taking into consideration (a) any reduction in the Available Commitment, including any other Advances by the Bank on such Advance Date and (b) any increase in the Available Commitment as a result of any payments of principal made by the University on such Advance Date. Advances may be in any amount. With respect to any Request for Advance received by the Bank after the time required by this Section 2.3, the Bank shall be required to make such Advance by 2:00 p.m. (New York, New York time) on the

Business Day following the Business Day on which the Bank would otherwise be required to make such Advance had such Request for Advance been timely presented. An Authorized Officer of the University shall sign each Request for Advance. Each Advance shall be made by the Bank by wire transfer of immediately available funds to the University or its designee in accordance with written instructions provided by the University.

Section 2.4. Interest on Advances.

(a) Except following the occurrence of an Event of Default hereunder, each Advance shall bear interest at the Applicable Interest Rate. Interest on each Advance shall be due and payable [monthly / quarterly] in arrears on the first (1<sup>st</sup>) Business Day of each [month / \_\_\_\_\_ 1, \_\_\_\_\_ 1, \_\_\_\_\_ 1, and \_\_\_\_\_ 1], and upon the maturity of such Advance in accordance with Section 2.2 above, in each case calculated on the basis of the actual number of days elapsed over a year of [360 / 365 or 366] days[, as applicable].

(b) After the occurrence of an Event of Default, all Advances shall bear interest at the Default Rate unless the Bank shall agree otherwise in writing.

(c) In addition to the foregoing, for any period during which any obligation hereunder or under the Note bears interest at a rate in excess of the Maximum Rate, and if, for any subsequent period, the Applicable Interest Rate or the Default Rate, as applicable, is less than the Maximum Rate, the interest payable for such subsequent period on said obligation remaining unpaid shall be increased by the Claw Back Amount, but only to the extent that the interest payable on said obligation remaining unpaid, taking into consideration the Claw Back Amount, would not for such subsequent period exceed the Maximum Rate. The Claw Back Amount which accrues to the extent the Applicable Interest Rate or the Default Rate, as applicable, exceeds the Maximum Rate shall bear interest at the Applicable Interest Rate plus \_\_\_\_\_ basis points per annum. Any Claw Back Amount not paid in full to the Bank on or prior to the Expiration Date shall, on said Expiration Date but subject to applicable law, become due and payable on such Expiration Date as an additional fee.

Section 2.5. Optional Prepayments.

(a) The University may prepay any Advance in whole or in part, without premium or penalty except as provided below, provided that on the date of each such prepayment, the University shall pay to the Bank the principal amount of the Advance or portion thereof to be prepaid, plus accrued interest thereon to the date of prepayment. In consideration of the Bank providing this prepayment option to the Borrower, or if any Advance shall become due and payable at any time prior to the last day of the LIBOR Period applicable thereto by acceleration or otherwise, the Borrower shall pay to the Bank immediately upon demand a fee which is the sum of the discounted monthly differences for each month from the month of prepayment through the month in which such LIBOR Period matures, calculated as follows for each such month:



(i) Determine the amount of interest which would have accrued on the amount prepaid at the interest rate applicable to such amount had it remained outstanding until the last day of the LIBOR Period applicable thereto.

(ii) Subtract from the amount determined in paragraph (i) above the amount of interest which would have accrued for the same month on the amount prepaid for the remaining term of such LIBOR Period at LIBOR in effect on the date of prepayment for new loans made for such term and in a principal amount equal to the amount prepaid.

(iii) If the result obtained in paragraph (ii) above for any month is greater than zero, discount that difference by LIBOR used in paragraph (ii) above.

The University acknowledges that prepayment of such amount may result in the Bank incurring additional costs, expenses and/or liabilities, and that it is difficult to ascertain the full extent of such costs, expenses and/or liabilities. The University, therefore, agrees to pay the above-described prepayment fee and agrees that said amount represents a reasonable estimate of the prepayment costs, expenses and/or liabilities of the Bank.

(b) On the Expiration Date, if no Event of Default has occurred and is continuing, and if all representations and warranties of the University hereunder are true and correct, the aggregate principal balance of all Advances outstanding under this Agreement shall be repaid with a final Advance referred to as the "Liquidity Draw." Interest on the Liquidity Draw shall continue as provided in Section 2.4. The principal portion of the Liquidity Draw shall be payable on or before the 180<sup>th</sup> day following the Expiration Date, except as provided in the following sentence. On the 180<sup>th</sup> day following the Expiration Date, if no Event of Default has occurred and is continuing, and all representations and warranties of the University hereunder are true and correct, any outstanding principal portion of the Liquidity Draw will be repaid semi-annually, in six equal payments, commencing 180 days after the Expiration Date, in an amount sufficient to fully-amortize such outstanding amount over a period of 36 months from the Expiration Date. The unpaid balance of any Liquidity Draw shall be due and payable in full on the third anniversary of the Expiration Date.

#### Section 2.6. The Note.

The University's obligation to repay outstanding Advances hereunder (and interest in connection therewith) shall be evidenced by the Note. The Note shall (i) be duly completed and payable to the Bank or its assigns, (ii) be dated the Effective Date (or such other date as may be agreed upon between the Bank and the University), (iii) be in a stated principal amount equal to the amount of the initial Available Commitment, and (iv) mature on the Expiration Date. The Bank is hereby authorized by the University to endorse on the Note (or on any schedule attached thereto, or on a continuation of such schedule attached thereto) or otherwise make in the Bank's records an appropriate notation of the date and amount of each Advance and each payment of principal made by the University. Such endorsements or other notations shall, in the absence of manifest

error, be conclusive as to the outstanding principal balance of the Note; provided, however, that any error in making or failure to make any such endorsement or notation shall not limit or otherwise affect the obligations of the University hereunder or under the Note.

Section 2.7. Obligations Absolute.

(a) The obligations of the University under this Agreement and the Note shall be absolute, unconditional and irrevocable and shall be paid and performed strictly in accordance with the terms hereof and thereof, under all circumstances whatsoever, including, without limitation, the following circumstances:

- (i) any lack of validity or enforceability of this Agreement or the Note;
- (ii) any amendment or waiver of or any consent to departure from the terms of this Agreement or the Note, if not effected in accordance with Section 8.7 hereof;
- (iii) the existence of any claim, setoff, defense or other right which the University may have at any time against the Bank or any other Person, whether in connection with this Agreement, the Note or any unrelated transaction;
- (iv) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, proceeding for relief, assignment for benefit of creditors, reorganization, composition or readjustment of, or sale or other disposition of all or substantially all of the assets of, or the marshalling of the assets and liabilities of, or any proceeding for accounting of, the University;
- (v) any statement or any other document presented pursuant hereto that proves to be forged, fraudulent, invalid or insufficient in any respect or untrue or inaccurate in any respect whatsoever;
- (vi) payment by the Bank hereunder against presentation of a Request for Advance which does not comply with the terms of this Agreement; provided, that such payment shall not constitute gross negligence of the Bank; and
- (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; provided, that such other circumstance or happening shall not have been the result of gross negligence or willful misconduct of the Bank.

(b) Notwithstanding the foregoing, the Bank acknowledges the sovereign status of the University as a public body and governmental instrumentality of the Commonwealth.

## ARTICLE III TERMS

### Section 3.1. Fees.

In consideration of the Bank's agreement to make the Facility available to the University hereunder, the University agrees to pay to the Bank the [undrawn / unused] fees (if any), and other fees as set forth in the Fee Letter. Any amounts due and payable under the Fee Letter shall be considered due and payable hereunder for all purposes of this Agreement as if the Fee Letter were set forth herein in full.

### Section 3.2. Payment of Interest after Event of Default.

Upon the occurrence and during the continuance of any Event of Default, the Bank may from time to time demand from the University, and the University hereby agrees to pay upon such demand, accrued interest on any or all Advances outstanding at the time of the occurrence or continuance of such Event of Default.

### Section 3.3. Taxes.

To the extent permitted by law, any and all payments by the University hereunder shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on the overall net income of the Bank (and franchise taxes imposed in lieu of net income taxes) by the jurisdiction of the Bank's applicable lending office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the University shall be required by law to withhold or deduct any Taxes from or in respect of any sum payable hereunder then, to the extent permitted by law, (i) the sum payable shall be increased as may be necessary so that after making all required withholdings or deductions (including those Taxes payable solely by reason of additional sums payable under this Section 3.4), the Bank receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (ii) the University shall make such withholdings or deductions, and (iii) the University shall pay the full amount withheld or deducted to the relevant taxation authority or other authority in accordance with applicable law.

### Section 3.4. Reduction of Available Commitment; Termination of Agreement.

(a) The University may permanently reduce the amount of the Available Commitment, at any time and from time to time, in any integral multiple of \$1,000,000, by delivering to the Bank a certificate in substantially the form of Exhibit C at least thirty (30) days' prior to the proposed effective date of such reduction. In connection with any such reduction, the University shall prepay any Advances outstanding under the Facility in excess of the proposed reduced Available Commitment, together with all interest accrued or to accrue through the date of prepayment.

(b) Subject to the payment to the Bank of all amounts due hereunder, including amounts due under Section 3.1 and Section 3.2, the University may terminate this Agreement at any time by delivering to the Bank a certificate in substantially the form of Exhibit C at least thirty (30) days prior to the proposed effective date of such termination.

Section 3.5. Extension of Scheduled Expiration Date.

The Scheduled Expiration Date may be extended by the Bank, in its sole and absolute discretion, upon the written request of the University in the form of Exhibit D given to the Bank at least ninety (90) days prior to the Scheduled Expiration Date. Within thirty (30) days of receipt of a request for extension, the Bank shall either notify the University that the Scheduled Expiration Date will be extended to the new Scheduled Expiration Date set forth in a notice in the form of Exhibit E to the University or notify the University that the Scheduled Expiration Date will not be so extended. Failure of the Bank to so respond to any such request shall constitute a denial of such request. Upon any extension of the Scheduled Expiration Date pursuant to this Section, the Bank and the University reserve the right to renegotiate any provision hereof.

Section 3.6. Payments and Computations.

(a) All payments by the University under this Agreement and the Note shall be made to the Bank in Dollars and in immediately available funds to the account designated by the Bank.

(b) All payments by the University under this Agreement and the Note shall be made to the Bank not later than 1:00 p.m., New York, New York time on the payment date. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(c) All interest and fees payable hereunder and under the Note shall be calculated on the basis of the actual number of days elapsed or to elapse over a year of 360 days. Any change in the Applicable Interest Rate or the Default Rate shall become effective as of the opening of business on the day on which such change shall become effective.

(d) Whenever a payment is due to the Bank under this Agreement, the University shall be deemed to have made such payment at the time such payment is made available to the Bank.

Section 3.7. Source of Payment; Pledge of General Revenues.

The obligations of the University hereunder and under the Note are payable from any or all of the revenues now or hereafter available to the University, including, but not limited to, and subject to guidelines promulgated by the Secretary of Finance of the Commonwealth, moneys appropriated to the University from the general fund of the Commonwealth or from nongeneral funds, without regard to the source of such moneys, and which are not required by law or by binding contract entered into prior to the date of this Agreement to be devoted to some other purpose ("General Revenues"), which General Revenues are hereby pledged to the payment of all obligations of the University hereunder and under the Note on a parity basis with all other General Revenue Obligations.

Section 3.8. Purpose of Advances.

The proceeds of each Advance made under the Facility shall be used by the University for working capital, for general corporate and operating purposes, and for any other lawful purpose.

ARTICLE IV  
CONDITIONS PRECEDENT

Section 4.1. Conditions Precedent to Effectiveness.

The Commitment Period shall commence on the date (the "Effective Date") on which each of the following conditions precedent shall have been fulfilled to the satisfaction of the Bank; provided, however, that the Effective Date shall occur no later than \_\_\_\_\_, 2018:

(a) The Bank shall have received an original counterpart of this Agreement and the original Note, each duly completed and executed by an Authorized Officer on behalf of the University.

(b) The Bank shall have received certified copies of all resolutions and other required approvals authorizing this Agreement and the transactions contemplated hereby (the "Authorizing Resolution").

(c) The Bank shall have received a certificate setting forth the names, titles and specimen signatures of all Authorized Officers expected to effect transactions hereunder, upon which certification the Bank may conclusively rely.

(d) If the Effective Date is later than the date of this Agreement, the Bank shall have received a certificate of the University to the effect that each of the representations and warranties contained in Article V shall, except to the extent that they relate specifically to an earlier date, be true with the same effect as though such representations and warranties had been made on the Effective Date.

(e) The Bank shall have received an opinion of the University's general counsel, dated the Effective Date, in form and substance satisfactory to the Bank and covering such matters as the Bank may reasonably request including, without limitation, the matters described in paragraphs (a) through (e) (other than clause (ii) thereof) and paragraph (h) of Section 5.1.

(f) The Bank shall have received an opinion of McGuireWoods LLP, as bond counsel to the University, dated the Effective Date, in form and substance satisfactory to the Bank and covering such matters as the Bank may reasonably request including, without limitation, the matters described in paragraphs (f) and (g) of Section 5.1.

(g) All fees and expenses due and payable in accordance with the Fee Letter and the provisions of Section 8.3 shall have been paid.

(h) All other legal matters pertaining to the execution and delivery of this Agreement and the Note shall be satisfactory to the Bank, and the Bank shall have received such other statements, certificates, agreements, documents and information with respect to the University and matters contemplated by this Agreement as the Bank shall have requested.

#### Section 4.2. Conditions Precedent to Each Advance.

The obligation of the Bank to make an Advance on any Advance Date is subject to the conditions precedent that: (a) the Bank shall have received a timely, complete and duly executed Request for Advance, (b) no Event of Default has occurred and is continuing, and (c) the Expiration Date shall not have occurred. Unless the University shall have otherwise previously advised the Bank in writing, delivery to the Bank of a Request for Advance shall be deemed to constitute a representation and warranty by the University that on the Advance Date all of such conditions have been satisfied.

### ARTICLE V REPRESENTATIONS AND WARRANTIES

#### Section 5.1. Representations and Warranties of the University.

The University hereby represents and warrants to the Bank, which representations and warranties shall survive the execution and delivery of this Agreement and the Note and the making of each Advance, as follows:

(a) Organization and Authorization. The University is an educational institution established by the Commonwealth as a public body and governmental instrumentality for the dissemination of education, duly organized and validly existing under laws of the Commonwealth.

(b) Authorization to Execute Documents. The University has full power and authority to execute and deliver this Agreement and the Note, and to perform its obligations under each of the foregoing.

(c) Obligations Legal, Valid and Binding. This Agreement has been, and the Note once executed and delivered will have been, duly and validly authorized, executed and delivered by the University, and each of this Agreement and the Note constitutes or will constitute the legal, valid and binding obligation of the University enforceable against the University in accordance with its terms, except insofar as the enforceability thereof may be limited by sovereign immunity, by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights and remedies generally, and by general principles of equity, whether applied by a court of law or equity.

(d) University Not in Default. (i) No Default or Event of Default has occurred and is continuing hereunder, and (ii) the University is not in default under any other mortgage, indenture, contract, agreement, bond resolution, instrument or other undertaking evidencing Debt of the University or which purports to be binding on the University or on any of its assets (each such mortgage, indenture, contract, agreement, bond resolution, instrument or other undertaking being referred to individually as a "Debt Instrument" and, collectively, as "Debt Instruments"), which default could reasonably be expected to have a Material Adverse Effect.

(e) No Violation. The execution, delivery and performance by the University of this Agreement and the Note do not (i) violate any provision of the Act, any other laws of the Commonwealth or the United States of America or any other applicable law, regulation, order, writ, judgment or decree of any court, arbitrator or governmental authority, or (ii) violate any provision of, constitute a default under, or result in the creation or imposition of any Lien on any of the assets of the University pursuant to the provisions of, any Debt Instrument. The University is not a party to, or otherwise subject to, any provision contained in any Debt Instrument, or any other contract or agreement which limits the amount of, or otherwise imposes restrictions on the incurring of, obligations of the University that could reasonably be expected to result in a Material Adverse Effect.

(f) Consents. The University has obtained all consents and approvals of, and has made all filings, registrations and declarations with, all governmental authorities required under the Act or other applicable law for the execution, delivery and performance by the University of this Agreement and the Note and the pledge of General Revenues hereunder, and all such consents, approvals, filings, registrations and declarations remain in full force and effect.

(g) Obligations of the University. The obligations of the University hereunder and under the Note are payable from General Revenues of the University, and the pledge of such General Revenues hereunder is a valid and legally binding pledge thereof on a parity basis with all other General Revenue Obligations.

(h) Litigation. There is no action, suit, investigation or proceeding pending or, to the best of the University's knowledge after due inquiry, threatened against or affecting the University, in which an adverse determination could reasonably be expected to have a Material Adverse Effect.

(i) Disclosure. The representations and statements made by the University herein, in the Note, and in any other document furnished to the Bank by the University in connection herewith or therewith, are accurate in all material respects. No information, exhibit or report, including, without limitation, the financial statements furnished by or on behalf of the University to the Bank, contains any untrue statement of a material fact or omits any statement of a material fact necessary to make the statements contained herein, in light of the circumstances under which they were made, not misleading, and there are no facts that the University has not disclosed to the Bank that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(j) Financial Condition. The balance sheet of the University for the fiscal year of the University ended June 30, 2018 (or any subsequent fiscal year if annual financial statements for such fiscal year have been delivered to the Bank as required by Section 6.1(a)), and the related statements of revenues, expenses and changes in fund balances, present fairly the University's financial position as of the end of such fiscal year and the results of its operations and its income, fund balances and changes in financial position for the end of such fiscal year, in conformity with GAAP. No change has occurred relating to such balance sheet and related statements of revenues, expenses and changes (other than as are disclosed by the University to the Bank) that could reasonably be expected to have a Material Adverse Effect.

(k) Incorporation of Representations and Warranties by Reference. The representations and warranties of the University set forth in the Debt Instruments are true and accurate in all material respects.

(l) No Proposed Legal Changes. There is (i) no amendment or, to the knowledge of the University, proposed amendment to the Constitution of the Commonwealth, (ii) no published administrative interpretation of the Constitution or any other law of the Commonwealth, (iii) no legislation that has passed either house of the General Assembly of the Commonwealth, and (iv) no published judicial decision interpreting any of the foregoing, in any case which could reasonably be expected to have a Material Adverse Effect.

(m) Patriot Act Compliance. The University is not the target of any trade or economic sanctions promulgated by the United Nations or the governments of the United States, the United Kingdom, the European Union, or any other jurisdiction in which the University is located or operates (collectively, "Sanctions").

#### Section 5.2. Representations and Warranties of the Bank.

The Bank hereby represents and warrants to the University that this Agreement has been duly authorized by the Bank and, upon its execution and delivery by the Bank, will constitute the legal, valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms except insofar as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights and remedies generally, and by general principles of equity, whether applied by a court of law or equity.



## ARTICLE VI COVENANTS

### Section 6.1. Affirmative Covenants.

As long as this Agreement is in effect, and until all Advances and other amounts payable hereunder and under the Note are indefeasibly paid in full, the University will perform and observe the covenants set forth below:

(a) Financial Records; Other Reports. (i) The University shall at all times maintain financial records and furnish to the Bank, as soon as available but no later than 270 days after the end of each fiscal year of the University, financial statements prepared in accordance with GAAP including (i) a balance sheet as of the end of such fiscal year, (ii) the related statements of revenues, expenses and changes in fund balances for such fiscal year, and (iii) statements of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year of the University, audited by the Auditor of Public Accounts of the Commonwealth and accompanied by a certificate of an Authorized Officer of the University to the effect that no Default or Event of Default has occurred and is continuing. The University shall also provide the Bank promptly upon their becoming available, copies of any non-routine periodic or special reports filed by the University with any governmental authority, if such reports indicate that any event has occurred or condition exists which could reasonably be expected to have a Material Adverse Effect.

(ii) If the University delivers any of the information described in Section 6.1(a)(i) to the Electronic Municipal Market Access established by the Municipal Securities Rulemaking Board ("EMMA") within the timeframe required under Section 6.1(a)(i), the University shall not be obligated to furnish such information to the Bank.

(b) Notice of Certain Events. The University shall notify the Bank in writing as soon as possible after the University acquires knowledge of (i) the occurrence of any Default, (ii) any change in any Bond Rating, (iii) the occurrence of any default or other event under any Debt Instrument which could reasonably be expected to have a Material Adverse Effect, and (iv) the filing of any action or the occurrence of any activity which could lead to an initiative or referendum or any other similar event which could reasonably be expected to have a Material Adverse Effect.

(c) Other Information. The University shall furnish to the Bank, as the Bank may reasonably request, such additional financial information concerning the University in order to enable the Bank to determine whether the covenants, terms and provisions of this Agreement and the Note have been complied with by the University, and for that purpose, all pertinent books, documents and vouchers relating to the University's business, affairs and properties shall at all reasonable times during regular business hours and upon reasonable prior notice be open to the inspection of such accountants or other agents (who may make copies of all or any part thereof at their own cost and expense) as shall from time to time be designated by the Bank. Without limiting the

foregoing, upon reasonable prior notice, the University will permit the Bank to visit and inspect any of the properties of the University during regular business hours and to discuss the affairs, finances and accounts of the University with its officials and any accounting firm performing services for the University, as often as the Bank may reasonably request.

(d) Compliance with Obligations and Laws. The University shall observe and comply with all of its obligations arising in connection with this Agreement, the Note and the Debt Instruments and all laws of the Commonwealth and the United States of America, including any rules and regulations thereunder, applicable to the University.

(e) Litigation. The University shall forthwith notify the Bank in writing with respect to any pending or threatened litigation with respect to the University the existence of which causes the representation set forth in Section 5.1(h) to be untrue or inaccurate in any material respect.

(f) Licenses, Permits, Etc. The University will take all necessary and appropriate action to ensure the continuance in force of all material consents, licenses, permits, orders, decrees, approvals, authorizations, registrations and filings obtained or made in connection with this Agreement and the Note or necessary to maintain the enforceability against the University of this Agreement or the Note.

(g) Books and Records. The University shall keep or cause to be kept adequate and proper records and books of account with respect to its revenues, expenses and assets in which complete and correct entries shall be made.

(h) Maintenance of Existence. The University shall use its best efforts to preserve and maintain (i) its existence as an educational institution and a public body and governmental instrumentality of the Commonwealth, and (ii) its rights, franchises and privileges material to its ability to repay the obligations hereunder and under the Note.

(i) Other Matters. The University shall execute and deliver to the Bank all such documents and instruments, and do all such acts and things, as may be necessary or reasonably required by the Bank to enable the Bank to exercise and enforce its rights under this Agreement and the Note and to realize thereon, and record and file and re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or reasonably required by the Bank to validate, preserve and protect its rights under this Agreement and the Note.

(j) Patriot Act Compliance. The University shall observe and comply with (a) all Sanctions, (b) all laws and regulations that relate to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto, (c) the U.S. Foreign Corrupt Practices Act of 1977, as amended, (d) the U.K. Bribery Act of 2010, as amended, and (e) any other applicable anti-bribery or anti-corruption laws and regulations.

Section 6.2. Negative Covenants.

As long as this Agreement is in effect, and until all Advances and other amounts payable hereunder and under the Note are indefeasibly paid in full, the University shall not, unless the Bank shall otherwise consent in writing:

(a) amend, supplement, extend, modify, waive, revise or otherwise alter or terminate any Debt Instrument if such amendment, supplement, extension, modification, waiver, revision, alteration or termination could reasonably be expected to result in a Material Adverse Effect;

(b) violate any law, rule, regulation, or governmental order to which it is subject, which violation could reasonably be expected to result in a Material Adverse Effect; or

(c) merge, consolidate, sell, transfer, lease or otherwise dispose of all or any substantial part of its property, other than a merger with or consolidation into any other governmental entity that assumes all obligations of the University under this Agreement and the Note.

## ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

### Section 7.1. Events of Default.

Each of the following events shall constitute an event of default (an "Event of Default") hereunder:

(a) Certain Payments. The University shall fail to pay the principal of or interest on any Advance (other than accelerated Advances) when the same shall become due and payable, whether at maturity or as otherwise scheduled, and such failure shall continue unremedied for a period of five (5) calendar days or more.

(b) Default under General Revenue Obligations. The University shall default in the payment of principal or interest on any General Revenue Obligations; provided that, for purposes of this Section 7.1(b) only, "General Revenue Obligations" shall only include Debt of the University described in clauses (ii) and (iv) of the definition of "Debt" in Section 1.1.

(c) Invalidity. The University challenges the validity or enforceability of any material provision of this Agreement or the Note concerning the payment of principal or interest, or any court or governmental authority having jurisdiction over this Agreement or the Note finds or rules that any material provision of this Agreement or Note concerning the payment of principal or interest is not valid and binding on the University.

(d) Appointment of Receiver, Etc. (i) An order or decree is entered, with the consent or acquiescence of the University, appointing a receiver or receivers of the University or of the revenues thereof, or if such order or decree, having been entered without the consent or acquiescence of the University, is not vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof; or (ii) any proceeding is instituted, with the consent or acquiescence of the University, for the purpose of effecting

a composition between the University and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted.

(e) Certain Other Payments. The University shall fail to pay accelerated principal of or interest on any Advance, or shall fail to pay any fee or other amount payable hereunder, when the same shall become due and payable.

(f) Representations Untrue. Any representation, warranty, certification or statement made by the University in or pursuant to this Agreement or in any certificate, financial statement or other document delivered pursuant to this Agreement or incorporated herein, shall (in any such case) have been incorrect or untrue in any material respect when made or deemed to have been made.

(g) Covenant Defaults. The University shall default in the due performance or observance of any term, covenant or agreement contained herein (other than those covered by paragraph (a) or (e) above).

(h) Invalidity. Any material provision of this Agreement or the Note concerning the payment of principal or interest shall, for any reason, cease to be valid and binding on the University.

#### Section 7.2. Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, the Bank may:

(i) immediately terminate its obligation to make Advances under the Facility; and

(ii) immediately, without presentment, demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding, declare all outstanding Advances, all interest thereon and all other amounts payable under this Agreement and the Note to be immediately due and payable (and in the case of an Event of Default under Section 7.1(d), such amounts shall automatically become due and payable).

(b) In addition to the rights and remedies set forth in paragraph (a) above, in the case of any Event of Default, the Bank may exercise any or all other rights and remedies existing at law or in equity (including, without limitation, the right to proceed by appropriate court action, either at law or in equity, to enforce performance by the University of the applicable representations and warranties and covenants of this Agreement and the Note or to recover damages for the breach thereof).

(c) The Bank acknowledges that, if at any time there are insufficient funds to pay debt service on the University's General Revenue Obligations, as described in Section 7.3 of the University's bond resolution adopted August 31, 2015 (the "Bond Resolution"), a trustee may be appointed to represent the holders of Parity Credit

Obligations (as defined in the Bond Resolution) and to provide for a pro-rata distribution of available funds among all Parity Credit Obligations, including the obligations of the University to the Bank under this Agreement. The provisions of such Section 7.3 (which are referred to herein as the "Bond Provisions") are included in substantially similar form in the University's prior bond resolutions, are required to be included in its future bond resolutions, and are hereby incorporated into this Agreement by reference. The Bank, as the holder of a Parity Credit Obligation, agrees to the appointment of such trustee and covenants to cooperate with such trustee in the pro-rata distribution of funds among Parity Credit Obligations as provided in the Bond Provisions.

## ARTICLE VIII MISCELLANEOUS

### Section 8.1. Notices.

Unless otherwise specifically provided herein, all notices and other communications hereunder shall be in writing and shall be given by courier, United States certified or registered mail, or facsimile transmission. Notices and communications hereunder shall be effective when received and shall be sent to the following addresses (or to such other address(es) of which either party hereto shall notify the other party in accordance herewith):

If to the Bank, to:

[Lender Name]  
[Lender Address]  
Attention:  
Telephone:

If to the University, to:

Virginia Polytechnic Institute and State University  
210 Burrus Hall  
800 Drillfield Drive  
Blacksburg, Virginia 24061  
Attention: John J. Cusimano, University Treasurer  
Telephone: (540) 231-7094

### Section 8.2. Liability of the Bank.

The University assumes all risks with respect to the use of the proceeds of each Advance. Neither the Bank nor any of its officers, directors, employees or agents shall be liable or responsible for (i) the use which may be made of the proceeds of any Advance, (ii) the form, validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon (other than the validity as against the Bank of any agreement to which the Bank is a party), even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (iii) the lack of validity or enforceability

of this Agreement (other than the validity or enforceability as against the Bank), or (iv) any other circumstances whatsoever in making or failing to make payment under this Agreement or the Note; provided, however, that the University shall have a claim against the Bank, and the Bank shall be liable to the University, to the extent of any direct, as opposed to consequential, damages suffered by the University which the University proves were caused by (a) the Bank's willful misconduct or negligence in determining whether a Request for Advance presented hereunder complied with the terms hereof, or (b) the Bank's willful failure to make an Advance required to be made by it hereunder after receipt by it of a Request for Advance. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

Section 8.3. Costs and Expenses.

The University agrees to pay (a) on or prior to the Effective Date, all reasonable costs and expenses paid or incurred by the Bank, including the reasonable fees and out-of-pocket expenses of counsel for the Bank, in connection with the preparation, review, execution and delivery of this Agreement and the Note, and (b) upon demand and to the extent allowable by law, all other reasonable costs and expenses paid or incurred by the Bank, including the reasonable fees and out-of-pocket expenses of counsel for the Bank, or otherwise arising in connection with this Agreement or the Note, including without limitation, in connection with any transfer, amendment, supplement, modification or waiver with respect to this Agreement or the Note, the enforcement hereof or thereof or the protection of the rights of the Bank hereunder or thereunder.

Section 8.4. Participants.

The Bank shall have the right to grant participations from time to time (to be evidenced by one or more participation agreements or certificates of participation (each a "Participation Agreement")) in this Agreement and the Facility to one or more other persons or entities (each a "Participant"); provided, that the grant of any such participation shall not terminate or otherwise affect any obligation of the Bank hereunder. Each Participant purchasing such a participation shall, in the discretion of the Bank, have all rights of the Bank hereunder to the extent of the participation purchased; provided that the grant of any such participation (1) shall not require the University to deal with any Participant for matters related to this Agreement and the Facility, and (2) shall require the University to deal only with the Bank for matters related to this Agreement and the Facility. In connection with the granting of participations, the Bank may disclose to any proposed Participant any information that the University delivers or discloses, or causes to be delivered or disclosed, pursuant to this Agreement. The Bank shall give notice to the University of each Participant that is granted a participation pursuant to this Section 8.4; provided that the failure to give such notice shall not affect the validity of such participation.

Section 8.5. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the University and the Bank and their respective successors and assigns, except that (a) the University shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Bank, and (b) the Bank shall not have the right to assign its rights hereunder or any interest herein except (i) in connection with a participation as provided in Section 8.4, (ii) after the occurrence and during the continuance of an Event of Default, and (iii) otherwise with the prior written consent of the University (such consent not to be unreasonably withheld, conditioned or delayed). If the Bank requests the University's consent to such an assignment under clause (b)(iii) above and (1) the University fails to respond within 120 days of the University's receipt of the request, or (2) the University unreasonably withholds, conditions or delays its consent to such assignment for 120 days after its receipt of the request, then the University shall be deemed to have consented to such assignment.

Section 8.6. Final Agreement; Modification or Waiver of this Agreement.

This Agreement and the Note are intended by the parties hereto as final expressions of their agreement with respect to the subject matter hereof and thereof, are intended as complete and exclusive statements of the terms and conditions of that agreement, and may not be contradicted, modified or supplemented in any way by evidence of any prior or contemporaneous written or oral agreements of the University and the Bank. No modification or waiver of any provision of this Agreement (including this Section 8.6) shall be effective unless the same shall be in writing and signed by the Bank and the University. Any modification or waiver referred to in this Section 8.6 shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the University in any case shall entitle the University to any other or further notice or demand in the same, similar or other circumstances.

Section 8.7. No Waiver of Rights by the Bank; Cumulative Rights.

No course of dealing or failure or delay on the part of the Bank or the University in exercising any right, power or privilege hereunder shall preclude any other or further exercise of any right, power or privilege. The rights of the Bank and the University under this Agreement and the Note are cumulative and not exclusive of any rights or remedies which the Bank or the University would otherwise have.

Section 8.8. Governing Law.

The obligations of the Bank and the University hereunder and under the Note shall be construed in accordance with and governed by the laws of the Commonwealth. Any suits and actions arising out of this Agreement or the Note shall be instituted in a court of competent jurisdiction in the Commonwealth.

Section 8.9. Severability.

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired

thereby. The parties shall negotiate in good faith to replace any invalid, illegal or unenforceable provision with a valid provision, which, to the extent possible, will preserve the economic effect of the invalid, illegal or unenforceable provisions.

Section 8.10. Counterparts.

This Agreement may be executed in two counterparts, each of which shall constitute an original but both of which, when taken together, shall constitute but one document, and shall become effective when copies hereof, when taken together, bear the signatures of each of the parties hereto.

Section 8.11. Captions.

The captions in this Agreement are for convenience only and do not define or limit the scope or intent of any provisions of this Agreement.

Section 8.12. Patriot Act.

The Bank hereby notifies the University that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Issuer, which information includes the name and address of the Issuer and other information that will allow the Bank to identify the University in accordance with the Patriot Act. The University shall promptly provide such information upon request by the Bank.

[Signatures begin on following page]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective representatives thereunto authorized as of the date first above written.

UNIVERSITY:

VIRGINIA POLYTECHNIC INSTITUTE AND STATE  
UNIVERSITY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Signatures continue on following page]

BANK:

[LENDER NAME]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT AFORM OF PROMISSORY NOTE

\$\_\_\_\_\_.00

\_\_\_\_\_, 2018  
Blacksburg,

Virginia

FOR VALUE RECEIVED, VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, an educational institution established by the Commonwealth of Virginia as a public body and governmental instrumentality for the dissemination of education (the "University"), promises to pay to the order of [LENDER NAME], a national banking association, or its registered assigns (the "Bank"), the lesser of the unpaid principal amounts advanced by the Bank to the University hereunder (the "Advances") and the principal sum of \_\_\_\_\_ MILLION AND NO/100 DOLLARS (\$\_\_\_\_\_.00) on the Expiration Date (as defined in the Credit Agreement, as hereinafter defined) or in the case of a Liquidity Draw (as defined in the Credit Agreement) in accordance with the terms of the Credit Agreement. The University promises to pay the unpaid principal amount of the Advances and interest thereon on the dates and at the rate or rates provided for in the Credit Agreement. All such payments of principal and interest shall be made in lawful money of the United States of America, in immediately available funds, to such account which the Bank may designate in accordance with the Credit Agreement.

This note is the "Note" referred to in the Revolving Credit Agreement dated as of even date herewith by and between the University and the Bank (as the same may be amended from time to time, the "Credit Agreement"). Terms defined in the Credit Agreement are used herein with the same meanings.

All Advances and repayments of the principal of the Advances may be recorded by the Bank and appropriate notations to evidence the foregoing information with respect to the Advances may be endorsed by the Bank on the schedule attached hereto, or on a continuation of such schedule attached to and made a part hereof; provided, that the failure of the Bank to make any such recordation or endorsement shall not affect the obligations of the University hereunder or under the Credit Agreement.

As provided in the Credit Agreement, this note is payable from General Revenues of the University, which General Revenues have been pledged to the Bank by the University on a parity basis with all other General Revenue Obligations. This note and the interest hereon shall not be deemed to constitute a debt or liability of the Commonwealth of Virginia, legal, moral or otherwise. Neither the Commonwealth of Virginia nor the University shall be obligated to pay the principal of or interest on this note or other costs incident hereto except from the sources noted above, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia are pledged to the payment of the principal of or interest on this note or other costs incident hereto.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all conditions, acts and things required by the Constitution and laws of the Commonwealth of Virginia to exist, to have happened and to have been performed precedent to and in the issuance of this note do exist, have happened and have been performed in due time, form and manner as required by law and that the issuance of this note does not violate any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the University has caused this note to be executed in the name of and for the University, and has caused this note to be dated as of the date set forth above.

VIRGINIA POLYTECHNIC INSTITUTE AND STATE  
UNIVERSITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE TO PROMISSORY NOTE  
ADVANCES AND PAYMENTS OF PRINCIPAL

<u>Date</u>	<u>Amount of Advance</u>	<u>Amount of Principal Repaid</u>	<u>Notation Made By</u>
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EXHIBIT B

FORM OF REQUEST FOR ADVANCE

[Date]

[Lender Name]

[Lender Address]

Attention:

Ladies and Gentlemen:

Reference is made to the Revolving Credit Agreement dated as of \_\_\_\_\_, 2018 (the "Credit Agreement"), by and between Virginia Polytechnic Institute and State University (the "University") and [Lender Name] (the terms defined therein being used herein as therein defined). The University hereby requests, pursuant to Section 2.3 of the Credit Agreement, that you make an Advance under the Credit Agreement, and in that connection sets forth below the following information relating to such Advance:

- (a) The amount of the Advance requested is \$\_\_\_\_\_.
- (b) The Advance Date requested is \_\_\_\_\_.

The University hereby certifies that the proceeds of the Advance will be used by the University for working capital, for general corporate and operating purposes or for another lawful purpose.

This Advance should be made by wire transfer of immediately available funds to the undersigned in accordance with the instructions set forth below:

[Insert wire instructions]

Very truly yours,

VIRGINIA POLYTECHNIC INSTITUTE AND STATE  
UNIVERSITY

By: \_\_\_\_\_  
Authorized Officer

EXHIBIT C

FORM OF REQUEST FOR TERMINATION OR REDUCTION

[Date]

[Lender Name]  
[Lender Address]  
Attention:

Ladies and Gentlemen:

Reference is made to the Revolving Credit Agreement dated as of \_\_\_\_\_, 2018 (the "Credit Agreement"), by and between Virginia Polytechnic Institute and State University (the "University") and [Lender Name] (the terms defined therein being used herein as therein defined).

[The University hereby requests that the Credit Agreement be terminated in accordance with, and subject to, the terms thereof.]

OR

[The University hereby requests that the Available Commitment be permanently reduced from [insert amount as of the date of Certificate] to [insert new amount], such reduction to be effective on \_\_\_\_\_.] The reduction in the Available Commitment is an integral multiple of \$1,000,000.

Very truly yours,

VIRGINIA POLYTECHNIC INSTITUTE AND STATE  
UNIVERSITY

By: \_\_\_\_\_  
Authorized Officer

EXHIBIT D

FORM OF REQUEST FOR EXTENSION OF SCHEDULED EXPIRATION DATE

[Date]

[Lender Name]

[Lender Address]

Attention:

Ladies and Gentlemen:

Reference is made to the Revolving Credit Agreement dated as of \_\_\_\_\_, 2018 (the "Credit Agreement"), by and between Virginia Polytechnic Institute and State University (the "University") and [Lender Name] (the terms defined therein being used herein as therein defined). Pursuant to Section 3.5 of the Credit Agreement, the University hereby requests an extension of the Scheduled Expiration Date to \_\_\_\_\_, 20\_\_\_\_.

The University hereby represents and warrants that, except as noted below, no Default or Event of Default has occurred and is continuing and all representations and warranties of the University in the Credit Agreement are true and correct on the date hereof.

[IDENTIFY PENDING DEFAULT OR EVENT OF DEFAULT]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Request for Extension of Scheduled Expiration Date as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Very truly yours,

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

By: \_\_\_\_\_  
Authorized Officer



EXHIBIT E

FORM OF NOTICE OF EXTENSION OF SCHEDULED EXPIRATION DATE

[Date]

Virginia Polytechnic Institute and State University  
220 Burrus Hall  
800 Drillfield Drive  
Blacksburg, Virginia 24061  
Attention: University Treasurer

Ladies and Gentlemen:

Reference is made to the Revolving Credit Agreement dated as of \_\_\_\_\_, 2018 (the "Credit Agreement"), by and between Virginia Polytechnic Institute and State University (the "University") and [Lender Name] (the terms defined therein being used herein as therein defined). Pursuant to Section 3.5 of the Credit Agreement, the University has requested an extension of the Scheduled Expiration Date to \_\_\_\_\_, 20\_\_\_\_.

Please be advised that:

[COMPLETE AS APPROPRIATE.]

1. At the request and for the account of the University, the Bank hereby extends the Scheduled Expiration Date to \_\_\_\_\_, 20\_\_\_\_ [INCLUDE ADDITIONAL TERMS IF APPLICABLE].
2. Except as specifically provided in the paragraph 1 above, all of the terms and conditions of the Credit Agreement remain unchanged and in full force and effect.
3. This Notice of Extension of Scheduled Expiration Date is an integral part of the Credit Agreement.

[OR]

The Bank hereby elects not to extend the Scheduled Expiration  
Date.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Extension of Scheduled Expiration Date as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Very truly yours,

[LENDER NAME]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_