

VIRGINIA COMMONWEALTH UNIVERSITY GENERAL CONTRACTUAL PROVISIONS

- A. **COMPLIANCE.** Firm¹ will comply with all applicable laws, regulations, industry codes, and guidance in performing services under this Agreement.
- B. **CONFLICT OF INTERESTS.** The Firm attests represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 *et seq* of the *Code of Virginia (Virginia Code)*), the Virginia Ethics In Public Contracting Act (*Virginia Code § 2.2-4367 et seq*), the Virginia Governmental Frauds Act (*Virginia Code § 18.2-498.1 et seq*) or any other applicable law or regulation. Should circumstances change, the Firm will notify the University of any potential conflict of interests prohibited under law.
- C. **INDEPENDENT CONTRACTOR:** Firm is not an employee of the University, but is engaged as an independent contractor. The Firm will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to the Firm's performance of this Agreement. Nothing in this Agreement will be construed as authority for the Firm to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.
- D. **WAIVER OF CLAIMS:** No waiver of any right will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right will prevent a later exercise of such or any other right.
- Notwithstanding anything contained herein to the contrary, VCU is an agency of the Commonwealth of Virginia and as such, pursuant to *Virginia Code § 2.2-514*, cannot waive or settle legal claims that VCU may have against another party nor may VCU bestow any right or obligation that is beyond the duly granted authority of the signatory to bestow or incur on behalf of the Commonwealth of Virginia.
- E. **NONDISCRIMINATION/ANTI-DISCRIMINATION:** During the performance of this Agreement, Firm will comply with the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975 (VFECA), as amended, the Virginians With Disabilities Act (VDA), the Americans With Disabilities Act (ADA) and § 9 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth (Governing Rules)*.

If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Governing Rules § 36*)

In every contract over \$10,000, the provisions below apply.

1. During the performance of this Agreement, the Firm agrees as follows:
 - a. The Firm will not discriminate against any employee or applicant for employment because of race, religion, color, gender, gender identity, national origin, age, disability or other basis prohibited by state law relating discrimination, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Firm. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Firm, in all solicitations or advertisements for employees placed by or on behalf of the Firm, will

¹ The term "Firm" shall have the same meaning and be interchangeable with the terms "Vendor", "Supplier" and/or "Firm" as such terms may be used/referenced in this Agreement or any underlying agreement documents.

state that such Firm is an equal opportunity employer.

- c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- d. If Firm employs more than five employees, Firm shall (i) provide annual training on Firm's sexual harassment policy to all supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post Firm's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth of Virginia that Firm owns or leases for business purposes and (b) Firm's employee handbook.

2. The Firm will include the provisions of a through d above in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

F. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Firm warrants and certifies that it does not and will not during the performance of this contract employ unauthorized alien workers, as defined by the federal Immigration Reform and Control Act of 1986 or violate any other provisions of the Act.

G. **ANTITRUST:** By entering into a contract, Firm conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under this Agreement.

H. **NON-APPROPRIATION:** Funding for any Agreement between the University and a Firm is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated by the University effective the last day for which appropriated funding is available.

I. **VIRGINIA MINIMUM WAGE ACT:** All Firms must comply with the state and federal minimum wage requirements. Every Firm shall pay to each of their employee's wages at a rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum wage as prescribed by Virginia Minimum Wage Act (Virginia Code § 40.1-28.8 et seq.) and the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.), respectively. For details on minimum wage law requirements, contact the Department of Labor & Industry at: <https://doli.virginia.gov>.

J. **WORKERS' COMPENSATION:** Firm will (i) obtain and maintain a workers' compensation policy for all employees in accordance with applicable law, and (ii) comply with all federal and/or state laws and regulations pertaining to Workers' Compensation requirements for insured or self-insured programs.

K. **DRUG-FREE WORKPLACE:** Firm, its agents and employees are prohibited, pursuant to *Governing Rules* §11, and the Commonwealth of Virginia, Department of Human Relations Management Policy No. 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

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

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a Firm, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

- L. **VIRGINIA FOIA:** Nothing contained herein is intended to limit VCU's compliance with the Virginia Freedom of Information Act ("VFOIA"). For clarity, agreements and pricing between VCU and its vendors are not considered to be exempt from VFOIA requests.
- M. **STATUTORY DAMAGES:** VCU is not authorized to waive damages granted or otherwise available by statute.
- N. **SOVEREIGN IMMUNITY:** VCU is an agency of the Commonwealth of Virginia and is afforded the protection of sovereign immunity under Virginia law. Any claims against VCU or the Commonwealth are subject to the requirements established under Virginia law for bringing such claims against VCU or the Commonwealth, including the Virginia Tort Claims Act (Virginia Code §§ 8.01-195.1 et seq.) and other applicable statutes relating to claims against the Commonwealth or its agencies. Notwithstanding any other provision, nothing in this Agreement shall be deemed to be or construed as a waiver of VCU's or the Commonwealth's sovereign immunity, or any other applicable requirements under Virginia law for bringing claims against VCU or the Commonwealth. The total cumulative liability of the University, its officers, employees, and agents in connection with this Agreement or in connection with any goods, services, actions or omissions relating to this Agreement, shall not under any circumstance exceed payment of the maximum purchase price.
- O. **REPRESENTATIONS AND WARRANTIES:** All representations and warranties made by the University are made to the best of its knowledge at the time the representation or warranty is made. University will use its best efforts to comply with all conditions and restrictions on its accounts and the services provided hereunder.
- P. **INFORMATION TECHNOLOGY ACCESS:** All electronic and information technology procured through this agreement must meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as amended and is viewable at <http://www.section508.gov>. If requested, the Firm must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. Additionally, in accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

All information technology ("Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

1. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
2. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
3. nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
4. the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if University's Director of Procurement Services determines (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Firm must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration. The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, *Virginia Code* §§ 2.2-3500 through 2.2-3504.

Q. **CONTRACTUAL CLAIMS PROCEDURE:** *Governing Rules § 53* (similar to the Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments) requires Firms with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the Firm's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

1. Firm must provide the written claim to:
Assistant Director of Purchasing
Virginia Commonwealth University
Office of Procurement Services
912 West Grace Street
Box 980327
Richmond, Virginia 23298
2. Although Firm may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section 1 above, Firm must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Purchasing if it wishes to pursue its claim.
3. Upon receiving the written claim, the Assistant Director of Purchasing will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Firm. If such discussion is to be held, the Assistant Director of Purchasing will contact Firm and arrange such discussion. The manner of conducting such discussion will be as Assistant Director of Purchasing and Firm mutually agree.
4. The Assistant Director of Purchasing will mail his or her decision to Firm within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.
5. Firm may appeal the decision to:
Director of Procurement Services
Virginia Commonwealth University
Office of Procurement Services
912 West Grace Street
Box 980327
Richmond, Virginia 23298

Provide a written statement explaining the basis of the appeal within fifteen (15) calendar days after Firm's receipt of the decision.
6. Upon receiving the written appeal, the Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Firm. If such discussion is to be held, the Senior Director of Procurement and Supplier Diversity Services will contact Firm and arrange such discussion. The manner of conducting such discussion will be as the Senior Director of Procurement and Supplier Diversity Services and Firm mutually agree.
7. The Senior Director of Procurement and Supplier Diversity Services will mail his or her decision to Firm within 60 days after the Senior Director of Procurement and Supplier Diversity Services receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

Nothing in this procedure will preclude either party from filing a claim in any court of the Commonwealth of Virginia to seek legal or equitable remedy if a dispute should arise, in addition to such other remedies as are expressly provided in this Agreement. Firm may not, however, file such claim unless and until it has complied fully with the procedure set forth in this provision.

R. **ARBITRATION:** Neither Party shall be compelled to agree to any form of binding alternative dispute resolution, but may request and/or opt to participate in non-binding alternative dispute resolution in its sole discretion.

- S. **PURCHASING MANUAL.** This Agreement is subject to the provisions of the Commonwealth of [Virginia Purchasing Manual for Institutions of Higher Education and Their Vendors](#) (*Purchasing Manual*) and any subsequent revisions, which is available on Procurement and Supplier Diversity Services website at: <https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf>.
- T. **REALSOURCE REGISTRATION:** The Firm is required to register in VCU's source-to-pay platform, RealSource, upon signing an agreement with VCU. For information on registering, visit realsource.vcu.edu. Registration is free, and registered vendors shall have access to purchase order, invoice, and payment information. Firm is responsible for the security of its RealSource portal account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of the Firm's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to the Firm's failure to update or protect its account information. If this is a cooperative procurement, this clause shall apply to orders placed by VCU only.
- U. **ORDERING PROCESS.** The University does not place verbal orders for Goods and Services. The University may only place orders for the Goods and Services by issuing a formal written Purchase Order in advance of Firm's provision of the Goods and Services. Accordingly, at the University's request, the Firm will issue a proposal/quotation listing the Goods and Services desired by the University and the corresponding fees and/or fee estimates. After any necessary discussions and/or revisions, the University will issue a corresponding Purchase Order for a specified fee amount. This specified fee amount cannot be exceeded by the Firm unless a new formal written Purchase Order or Purchase Order revision is issued by the University authorizing a specific additional fee amount. Under no circumstances does the University authorize the Firm to provide the Goods and Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If the Firm provides Goods and Services prior to receipt of a formal written Purchase Order, or incurs costs in excess of authorized purchase order fee amounts, it does so at its own risk.
- V. **eVA REGISTRATION:** The eVA Internet electronic procurement solution is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal, found at www.eva.virginia.gov, is a gateway for Firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA and all Firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution. Firm is required to register in the eVA Internet e-procurement solution as a condition of award and remain eVA registered during the term of this Agreement.
- Firm shall be responsible for the security of its eVA account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of Firm's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to Firm's failure to update or protect its account information.
- W. **eVA FEES:** Unless the procured services are exempt pursuant to eVA standard, Firm will be subject to an eVA transaction fee, for which Firm will be invoiced by Commonwealth of Virginia, Department of General Services. The Commonwealth shall assess eVA transaction fees as specified below for each order resulting from this Agreement. The Vendor transaction fee (which is subject to change) is:
1. DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 2. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- The specified Vendor transaction fee will be invoiced by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and the invoice is payable 30 days after the invoice date.
- Firm shall be prohibited from recouping or seeking reimbursement of the eVA fee by invoicing the University for the fee.***
- X. **SMALL, WOMEN-OWNED AND MINORITY-OWNED (SWaM) BUSINESS REPORTING:** If Firm has a SWaM plan or is required to have a SWaM plan, the Firm will identify and fairly consider SWaM Firms for subcontracting opportunities when qualified SWaM firms are available to perform a given task required under this Agreement. Firm will submit a quarterly SWaM business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January.

Firm will submit the quarterly SWAM business reports, based upon the Firm's proposed commitment to:

VCU SWaM Reporting
swamreporting@vcu.edu

The quarterly SWAM business reports will contain the following information:

1. SWAM firms' name, address and phone number with which Firm has contracted over the specified quarterly period.
2. Contact person at the SWAM firm who has knowledge of the specified information.
3. Type of goods and/or services provided over the specified period of time.
4. Total amount paid to the SWAM firm as it relates to the University's account.

Firm's failure to provide SWaM reports on a quarterly basis which contain the information required by this section and/or Firm's failure to comply with the plan for utilizing SWaM businesses submitted by Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to Section 9(G)(4) of the [Purchasing Manual](#).

- Y. **FEDERAL PROVISIONS:** For Contracts funded by a U.S. Government grant or contract, the following provisions found in [Appendix II of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule \(2 CFR Part 200, et al\)](#) shall be incorporated and made a part of this Contract.
- Z. **LIMITATION OF LIABILITY:** Firm shall be liable for the direct damages caused by the negligence of itself, its officers, employees, and agents in connection with this Agreement or any goods, services, actions, or omissions relating to this Agreement.
- AA. **GRAMM-LEACH-BLILEY ACT:** If applicable, the Firm shall comply with the Act by implementing and maintaining appropriate safeguards to protect and prevent unauthorized release of student, faculty and staff nonpublic information. Nonpublic information is defined as social security numbers, or financial transactions, bank, credit, and tax information.
- BB. **INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR):** If Firm is providing any items, data or services under this order that are controlled by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR), it must notify (by sending an email to exportctrl@vcu.edu and receive prior written authorization from, the University's Export Compliance Program before delivery. The notification provided by the supplier shall include the name of the Virginia Commonwealth University point of contact, identify each ITAR-controlled commodity, provide the associated U.S. Munitions List (USML) category number(s), and indicate whether or not the determination was reached as a result of a commodity jurisdiction or self-classification process. Firm agrees that if it fails to notify the University that it is providing ITAR-controlled items, data or services, it shall reimburse the University for any fines, legal costs and other fees imposed by the above-named regulatory agency for any violation of export controls regarding the provided items, data or services.
- CC. **COOPERATIVE PROCUREMENT / USE OF AGREEMENT BY THIRD PARTIES:** It is the University's intent to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institution, or any University-related foundation (Additional Users) may access this Agreement if authorized by Firm.

To that end and if agreeable with the Firm, upon written request from Additional Users the Firm may allow access to the contract. Although the University desires to provide access on such contract to Additional Users, the Firm is not required to provide such access. A Firm's willingness to provide this access to Additional Users, will not be a consideration in awarding this contract. Although the Additional Users have access to any resulting contract, Additional Users are not bound to use the contract and any use of the contract is strictly optional. If the Additional Users choose to access the contract and the Firm agrees to such access, the terms and conditions of the contract will be in full force and effect as between the Additional Users and the Firm. VCU will have no responsibility for the resolution of any contractual disputes, or for payment for services rendered which may arise from an Additional User accessing the contract. The Firm understands and agrees that it shall not have any recourse against VCU with respect to any claim it may have against another Additional User that accessed this contract.

- DD. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Firm desires to subcontract some part of the work specified herein, the Firm shall furnish the University with the names, qualifications and experience of their proposed subcontractors. The Firm shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.
- EE. **VCU CAMPUS COMPLIANCE:** Any Firm personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use, and conduct within such facilities. All Firm employees authorized to work at VCU must obtain a VCU identification card. Information on obtaining a card is available at <http://vcucard.vcu.edu/>. Firm's employees must wear their VCU identification when they are on VCU property.
- FF. **CRIMINAL BACKGROUND INVESTIGATION:** If Firm employees and agents will be on the VCU campus, or have access to protected data as defined herein, Firm must comply with the following: Firm shall ensure that its employees, full-time or part-time, including newly hired, re-hired, seasonal, and/or temporary, who may have access to VCU confidential or proprietary information, or data about VCU personnel or students, have passed a criminal background check pursuant to the *Virginia Code* § 2.2-1201.1. Criminal background checks shall comply with the standards set forth in VCU's employment policies found at:
- <http://www.policy.vcu.edu/sites/default/files/Criminal%20Conviction%20Investigations.pdf>
- Specifically, Firm shall ensure an investigation is conducted by a third-party vendor utilizing courthouse records and national databases to obtain records within the past seven (7) years. Convictions related to drugs, violence and/or sexual behavior are generally considered job related due to the nature of the VCU environment and the need to provide reasonable levels of protection for students, patients, employees, visitors, and institutional resources.
- GG. **INTELLECTUAL PROPERTY RIGHTS/DISCLOSURE:** Unless expressly agreed to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by Firm (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. Firm warrants to the University that the University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising from this Agreement and will have full ownership and beneficial use thereof free and clear of claims of any nature by any third party including without limitation copyright or patent infringement claims.
- Firm will execute any assignments or other documents needed for the University to perfect such rights. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.
- HH. **BRAND STANDARDS:** Firm warrants that any Creative Work produced for the University (1) will comply with the University's brand standards and (2) in its end application, will fit the visual look and feel of the overall brand aesthetic, brand concept, color palette, visual effects, photographic and video style standards, and make correct use of all marks including logos and identity components. Firm agrees that the University, in its sole discretion, will determine Firm's compliance with this Provision. Creative Work includes, but is not limited to: websites, applications, electronic communications, newsletters, advertisements, mailings, magazines, and other communication materials (digital and print) produced for the University. For additional guidance, Firm should consult the UVA Brand Guidelines at <https://brand.vcu.edu/vcu-university/guidelines> (requires registration) or contact University Trademark and Licensing (trademarks@vcu.edu.)
- II. **TRADEMARKS/LOGOS AND PROMOTIONAL ACTIVITY:** The University retains all rights, title and interest to its trademarks, logos and other intellectual property. Firm shall obtain approval in writing from the VCU Division of University Relations prior to use of any VCU marks, name, or logos. During the Term of the Agreement, Firm may reference the University as a customer in sales and marketing materials and public statements ("Promotional Materials"), provided such Promotional Materials do not include opinions explicitly or implicitly attributed to the University about the quality of the goods and/or services provided to the University. In no event shall Firm request

that the University or any University employee endorse Firm or Firm's goods and/or services. Promotional Materials may include the name "Virginia Commonwealth University" and VCU's approved institutional logo solely to identify accurately the University as an entity to whom Firm provides goods and/or services. Furthermore, the University grants Firm a limited, nonexclusive license to display the University's trademarks/logos solely as they are made available to Firm in connection with Firm's goods and/or services.

- JJ. **MARKETING AT VCU:** The University encourages Firm to appropriately and specifically market itself to applicable end-using University departments that may be interested in Firm's goods and/or services. However, Firm shall not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that Firm engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement.
- KK. **FAILURE TO DELIVER GOODS OR SERVICES:** In case of failure to deliver goods or services in accordance with the Agreement terms and conditions, VCU, after oral or written notice, may procure them from other sources and hold the Firm responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which VCU may have.
- LL. **SHIPPING:** Firm shall ship all goods FOB (Freight on Board) Destination at the actual freight rate based upon the actual weight of the goods to be shipped. All prices unless otherwise specified are FOB Destination, Freight Prepaid and Allowed.
- MM. **INSTALLATION DELIVERY AND STORAGE:** If applicable, it shall be the responsibility of the Firm to make all arrangements for delivery, unloading, receiving and storing materials in a VCU building during installation. VCU will not assume any responsibility for receiving these shipments. Firm shall check with VCU and make necessary arrangements for security and storage space in the building during installation.
- NN. **TESTING AND INSPECTION:** To the extent applicable, VCU reserves the right to conduct any testing/inspection it may deem advisable to ensure goods and services conform to the specifications/Agreement.
- OO. **TAXES:** Firm acknowledges all sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this Agreement shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- PP. **AUDIT:** The Firm shall retain all books, records, and other documents relative to this Agreement for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- QQ. **FAVORED CUSTOMER:** Firm represents that the prices, terms, warranties, and benefits are comparable to or better than the equivalent terms being offered by the Firm to any present customer.
- RR. **ADDITIONAL GOODS AND SERVICES:** The University reserves the right to have the Firm provide additional goods and/or services that may be required by the University during the Term of this Agreement. Any such goods and/or services will be provided under the same terms and conditions of this Agreement. Such additional goods and services may include other products, components, accessories, subsystems or services provided by the Firm. These additional goods and services will be provided to the University at Favored Customer pricing.
- SS. **EXTRA CHARGES NOT ALLOWED:** The Agreement price shall reflect all fees to be incurred for the performance of the Agreement, including all applicable freight and installation charges. Any additional fees that arise during the performance of the Agreement shall only be paid if approved by the University prior to incurring such fees.
- TT. **INDEMNIFICATION:** Firm agrees to indemnify, defend, and hold harmless VCU, the Commonwealth of Virginia, and their officers, employees and agents from any claim, damage, liability, injury, expense or loss, including defense costs and attorneys' fees, arising from Firm's negligence under this Agreement. Accordingly, VCU shall promptly notify Firm of any claim or action brought against VCU in connection with this Agreement. Upon such notification,

and at the request and direction of VCU and/or the Office of the Attorney General, Firm will immediately defend any such claim or action pursuant to the provisions and requirements of Virginia Code § 2.2-514.

- UU. **CONFIDENTIAL INFORMATION:** “Confidential Information” means all information of a party (“Disclosing party”) disclosed or made available to the other party (“Receiving party”) that (i) is clearly marked or identified as such at the time of disclosure or within a reasonable time thereafter; or (ii) should be reasonably known by the Receiving party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. Confidential Information of VCU shall include, but not be limited to information about VCU personnel and students of VCU to the extent such information is not available to the public domain in accordance with the laws of the Commonwealth of Virginia and FERPA. Firm shall use its reasonable efforts to prevent and protect Confidential Information from unauthorized use or disclosure, with at least the same degree of care that Firm uses to protect its own confidential and proprietary information, but in no event less than a reasonable degree of care under the circumstances. Each Party will only disclose the other Party’s Confidential Information to its employees, consultants, or subcontractors only on a need-to-know basis, provided that such employees or subcontractors are subject to confidentiality obligations no less restrictive than those contained herein. Upon the completion of the services and upon request of VCU, Firm shall return all Confidential Information received in written format, including copies or reproductions or other media containing Confidential Information within seven (7) calendar days of such request.
- VV. **FERPA:** To the extent that University provides to Firm any identifiable student information, including student address, phone number and email address, the University hereby designates Firm as a school official with a legitimate educational interest in using such student information, and Firm agrees to use such information only for the purpose of fulfilling its obligations under this Agreement. Firm further agrees not to disclose any such student information to any individual other than the student except as required by applicable law, rule or regulation or court or governmental order or as authorized in writing by the University or the individual student. Firm acknowledges that this protection of student information is necessary for the University’s compliance with the Virginia Code § 23.1-405(C) and the federal Family Educational Rights and Privacy Act (FERPA).
- WW. **LICENSE REQUIREMENTS:** Certain statutes and regulatory agencies require that some Firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. It is Firm’s responsibility to comply with the rules and regulations issued by the appropriate regulatory agencies, and possess and maintain the appropriate licenses if applicable for the Goods and/or Services to be provided under this Agreement. A copy of any such applicable license and/or permit must be furnished upon request to the University or VASCUPP member institution. For example, if Firm will be providing removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the Firm, must possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of this Agreement.
- XX. **FORCE MAJEURE:** Neither Party will be deemed in default or otherwise liable hereunder due to its inability to perform by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, governmental restrictions, act of public enemy, embargo, war, act of God, or any municipal, county, state, national or international ordinance or law or any executive, administrative, judicial or similar order, including orders from any governing body (which order is not the result of any act or omission to act which would constitute a default under this Agreement), or any failure or delay of any transportation, power, or other essential thing required, or similar causes beyond the Party’s control. Any delay in performance will be no greater than the event of force majeure causing the delay. If the delay or failure in the performance of the Party claiming Force Majeure continues for thirty (30) days or more, then the Party not claiming Force Majeure may terminate this Agreement by written notice to the other Party without penalty. Any funds paid will be reimbursed pro rata based on Services not provided.
- YY. **APPLICABLE LAW AND COURTS:** This Agreement shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia without regard to choice of law principles. The Parties agree that all disputes arising under this Agreement shall be brought in the state or federal courts located in Richmond, Virginia. To the extent any provision of the Agreement is prohibited by Virginia law, or is otherwise not authorized by Virginia law,

due to VCU's status as an agency of the Commonwealth of Virginia, such provision is null and void. Each party shall be responsible for its own legal fees and costs unless otherwise ordered by a court of law.

ZZ. MODIFICATION OF THE AGREEMENT:

1. The parties may agree to modify the scope of the Agreement. An increase or decrease in the price of the Agreement resulting from such modification shall be agreed by the parties as a part of their written Agreement to modify the scope of the Agreement.
2. The Purchasing Agency may order changes within the general scope of the Agreement at any time by written notice to the Firm. Changes within the scope of the Agreement include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Firm shall comply with the notice upon receipt. The Firm shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings.
3. Material, substantive modifications, changes, and amendments to the Agreement must be in a writing executed by authorized representatives of each party.

AAA. TERMINATION OF AGREEMENT:

1. Either Party may terminate this Agreement if the other Party materially breaches this Agreement and such breach is not cured within thirty (30) days after written notice to the breaching Party.
2. University reserves the right to terminate this Agreement, in part or in whole, without penalty, upon sixty (60) days written notice to the Firm.
3. Either Party may terminate this Agreement after the initial twelve (12) months of this Agreement upon sixty (60) days written notice to the other Party.

BBB. ENTIRE AGREEMENT: This is the entire agreement between the University (including University employees and other End Users) and Firm. The Agreement shall not be assignable by Firm in whole or in part without the written consent of the University. In the event that Firm enters into terms of use agreements or other agreements or understanding, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply. This Agreement may be executed in counterparts, each of which will be deemed an original, and both of which taken together will constitute one and the same document. Electronically transmitted signatures will be deemed originals for all purposes relating to the agreement.