Purchase Order Terms & Conditions

1. This purchase made by Virginia Commonwealth University ("VCU"), a corporation and institution of higher education of the Commonwealth of Virginia, is subject to the terms and conditions of the Commonwealth of Virginia Procurement Manual for Institutions of Higher Education and their Firms, and any revisions thereto, located at https://procurement.vcu.edu/for-suppliers/

2. These terms and conditions will be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia. All disputes arising under these terms and conditions will be brought before a court of competent jurisdiction located in Richmond, Virginia. VCU does not waive its right to a trial by jury.

3. Firm[1] shall deliver goods or perform services strictly in accordance with documents referred to and shall not deviate or substitute in any way from terms, conditions or specifications of this purchase without the prior approval of VCU.

4. Upon receipt, VCU is entitled to inspect and test any equipment, materials, or supplies. If rejected, same will remain the property of the Firm.

5. All prices, unless otherwise agreed by VCU, are net F.O.B. Destination with transportation charges prepaid.

6. Purchase Order and Taxpayer Identification numbers will be included by Firm on all related invoices, delivery memoranda, bill of lading, packages, and correspondence. Failure to return IRS W-9 form may result in payment delays.

7. A separate invoice for this purchase order or for each shipment thereon will be rendered immediately following shipment. All invoices will be forwarded directly to VCU at the invoice address shown on this purchase order.

8. Firm shall comply with all University invoicing requirements, including submission through VCU's designated intake channels and accurate referencing of applicable Purchase Orders. VCU reserves the right to reject or return any improper invoice, including but not limited to duplicate invoices, without penalty. In the event Firm repeatedly submits improper invoices, VCU may impose administrative fees and costs, and may deduct such fees and costs from future Firm payments.

9. State sales and use tax certificate of exemption, form ST-12, will be provided upon request.

10. Deliveries against this order must be free of excise or transportation taxes. Excise tax exemption registration No. 54-73-0076K may be used when required.

11. In case of default by Firm or failure to deliver the goods/services ordered by the time specified, VCU, after due notice (oral or written), may procure the goods/services from other sources and hold Firm responsible for any additional cost occasioned thereby.

12. Unless otherwise agreed upon by the parties, VCU will pay all amounts due net thirty-five (35) days following receipt of both a proper invoice and the services rendered or goods delivered.

13. If prompt payment discount is allowed, then the discount period begins on the date VCU receives a proper invoice.

14. If this order includes travel expenses, VCU will reimburse for those expenses in accordance with, and limited by, the

[1] The term "Firm" shall have the same meaning and be interchangeable with the terms "Vendor", "Supplier" and/or "Contractor" as such terms may be used/referenced in the Purchase Order.

VCU Travel Guidelines and Procedures, available here: https://procurement.vcu.edu/for-suppliers/.

15. VCU does not waive its or the Commonwealth's sovereign immunity or any other applicable requirement under Virginia law for bringing claims against VCU or the Commonwealth.

16. To the extent permitted by the Virginia Tort Claims Act, § 8.01-195.1, et. seq. of the Code of Virginia (Virginia Code), as amended, and other applicable statutes relating to claims against the Commonwealth of Virginia or VCU, VCU will be liable only for the negligent acts or omissions of its officers, employees, and agents. The total cumulative liability of the Commonwealth of Virginia, its officers, employees and agents in connection with any goods, services, actions, or omissions will not exceed the maximum purchase price. Firm will be liable for the actual damages caused by their negligence or that of their officers, employees, affiliates, agents, and subcontractors in connection with any goods, services, actions, or omissions.

17. VCU cannot keep the price confidential nor can it designate the price paid as proprietary information.

18. VCU's obligations to disclose records as required by the Virginia Freedom of Information Act will not be limited in any way.

19. VCU does not agree to indemnify, defend, or hold harmless Firm or any third party in any way. VCU will only be responsible for the negligent acts or omissions of its own agents and employees as mandated by law;

20. Firm will not use VCU's name or any of its logos, symbols, or marks without the prior written approval of VCU's University Relations department.

21. If Firm enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with VCU employees or other VCU end users, such agreements will be null and void, and without effect.

22. For work performed on-site, the Firm shall maintain the following insurance coverage: Worker's Compensation statutory requirements and benefits; Employer's Liability $500,000; Commercial General Liability $1,000,000 combined single limit; and Automobile Liability $1,000,000 combined single limit. If the Firm performs professional services, the Firm shall maintain Professional Liability $1,000,000 per occurrence. If the Firm provides software, software as a service, or will obtain, transmit, use, maintain, process or dispose of VCU data, the Firm shall maintain Cyber Security Liability $5,000,000 per occurrence unless otherwise modified by agreement.

23. If Firm provides software, software as a service, or will obtain, transmit, use, maintain, process or dispose of VCU data, the VCU Data Protection Addendum will apply to the order: https://procurement.vcu.edu/for-suppliers/.

24. Where required by law, the Firm acknowledges that all information technology which is purchased or upgraded by or for the use by VCU shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended.

25. Firm assures VCU that it complies with the Civil Rights Act of 1964, as amended, and the Virginia Fair Employment Contracting Act of 1975, as amended.

26. In accordance with Virginia Code § 2.2- 4343.1, VCU does not discriminate against faith-based organizations or on any other basis prohibited by state law. VCU is committed to providing an environment that emphasizes the dignity and value of every member of its community and that is free from sexual misconduct, assault, harassment or any form of discrimination based on sex/gender.

27. If this purchase is $10,001 or more, then the following two provisions apply: (1) vendor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Firm. Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Firm, in all solicitations or advertisements for employees placed by or on behalf of Firm, will state that Firm is an equal opportunity employer; and (2) Firm agrees to (a) provide a drug-free workplace for Firm's employees; (b) 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 Firm's workplace and specifying the actions that will be taken

against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of Firm that Firm maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order over $10,000 so that the provisions will be binding upon each subcontractor or Firm.

28. Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts Under Federal Awards will apply to purchases made under a federal grant.

29. By accepting this order, the Firm agrees that the order is subject to the eVA transaction fee as set forth on the "eVA Billing Portal" link at www.eva.virginia.gov.

30. Firm is responsible for the security of its eVA and RealSource portal accounts, including restricting access, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of those accounts. 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.

31. This purchase is subject to the availability of funding provided by the Virginia General Assembly or other applicable sources for the fulfillment of this specific purpose.

32. Neither Party will be responsible for any losses resulting from delay or failure in performance resulting from any cause beyond either Party's reasonable control, including without limitation, war, infrastructure failure, strikes or labor disputes, civil disturbances, fires, natural disasters, pandemics, including if VCU, in its sole discretion, must close a campus location or take other restrictive actions due to concerns related to the COVID-19 pandemic or acts of God. 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 unused funds paid will be reimbursed pro rata based on Services not provided.

33. If Firm, within the scope of this Agreement, creates or develops any intellectual property that is not derivative property already owned by Firm, such intellectual property shall be deemed "Work Made for Hire." Unless otherwise agreed in writing by the parties, VCU shall have sole, complete, and exclusive ownership of any such Work Made for Hire, including but not limited to any deliverable, process, product, idea, concept, or social media page. For the avoidance of doubt, Firm retains all rights in its pre-existing intellectual property, including its proprietary tools, methods, processes, know-how, templates, and any other intellectual property developed outside the scope of this Agreement ("Firm IP"). Nothing in this Agreement shall be construed to transfer or diminish Firm's ownership of Firm IP; provided, however, that Firm grants to VCU a non-exclusive, royalty-free license to use such Firm IP solely as incorporated into and necessary for VCU's use of the Work Made for Hire.

34. These terms and conditions supersede any terms and conditions offered by Firm unless the parties agree otherwise in a separate written agreement executed by authorized representatives of both parties.

35. In the event that a federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in Firm's costs to a level that renders performance under the Agreement impracticable, VCU may agree, at its discretion, to an increase to the purchase price for the affected good. No increase in purchase price may exceed the actual tariff imposed on the goods imported or purchased by the Firm that are provided to VCU under this Agreement.

    A. Prior to VCU agreeing to a price increase pursuant to this provision, the Firm must provide to VCU the following documentation, all of which must be satisfactory to VCU:

        a) evidence demonstrating: (i) the unit price paid by Firm as of the date of award for the good or raw material used to furnish the goods to VCU under this Agreement, (ii) the applicability of the tariff to the specific good or raw material, and (iii) Firm's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow VCU to verify that the tariff is the cause of the price change;

        b) a certification signed by Firm that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by VCU at a lower cost from a different source located outside of the country against which the tariff has been imposed;

c) a certification signed by Firm that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Firm would otherwise be unable to perform under this Agreement without such price increase; and

d) as requested by VCU, written instructions authorizing VCU to request additional documentation from Firm's suppliers to verify the information submitted by Firm.

B. If VCU agrees to a price increase pursuant to this provision, the parties further agree to add the following terms to this Agreement:

a) During the Term and for five (5) years after the termination of this Agreement, Firm shall retain, and VCU and its authorized representatives shall have the right to audit, examine, and make copies of, all of Firms books, accounts, and other records related to this Agreement and Firm's costs for providing goods to VCU, including, but not limited to those kept by the Firm's agents, assigns, successors, and subcontractors.

b) Notwithstanding anything to the contrary in this Agreement, VCU shall have the right to terminate this Agreement for VCU's convenience upon 15 days' written notice to Firm.

In the event the import duty or tariff is repealed or reduced prior to termination of this Agreement, the increase in VCU's contract price shall be reduced by the same amount and adjusted accordingly.

Any material misrepresentation made or caused to be made by a Firm, increasing the price and/or costs in a payment obligation due from the University, may be deemed fraud under the law, including by not limited to the Virginia Fraud Against Taxpayers Act, and such misrepresentation may be subject to penalties and damages.

35. In the event any payment from VCU to Firm is intercepted and offset by the federal government or the Commonwealth of Virginia pursuant to applicable law, such payment shall be deemed received in full by Firm for the applicable services or goods. Firm acknowledges that it shall not seek additional payments from VCU, suspend services, or refuse to perform under this Agreement solely due to such lawful offset. This provision shall not limit Firm's rights to pursue remedies directly with the applicable governmental entity responsible for the offset, nor shall it preclude Firm from enforcing its rights under this Agreement in the event of non-payment unrelated to such offset.