

UNIVERSITY OF VIRGINIA STANDARD SERVICE TERMS AND CONDITIONS

The Rector and Visitors of the University of Virginia (“University”) may from time to time provide services (“Services”) to external persons or entities (“Client(s)”). Unless the Services are provided pursuant to a separate written agreement between the parties, these standard service terms and conditions, coupled with the Client’s request for Services and any quotation that may be provided by the University to the Client, shall constitute the entire legally binding agreement (“Agreement”) between the University and the Client for the Services provided. Terms or conditions set forth in any request, purchase order, or other form issued by the Client shall be for administrative and tracking purposes only, and shall have no legal or binding effect on this Agreement.

1. QUOTATIONS AND BILLING

- A. The total fee for the Service (“Fee”) shall be fully detailed by the University in any quotation requested by the Client. Services may include tangible personal property (“Deliverables”) subject to Virginia sales and use tax, which will be added to the Fee unless the Client provides a valid Virginia Sales and Use Tax Certificate of Exemption.
- B. University quotes are valid for thirty (30) days; provided, however, that the University unit providing the Services may extend the quote validity period in its sole discretion.
- C. The University shall invoice the Client for the entire Fee and applicable tax upon completion of the Services, and Client shall pay the University within thirty (30) days of the receipt of such invoice. All payments hereunder shall be made payable to the “University of Virginia” (Tax ID# 54-6001796) and must be remitted as directed on the invoice. Amounts unpaid after thirty (30) days from the date of the invoice will accrue interest as allowed by law until paid.
- D. In the event it becomes necessary for University to commence collection proceedings or retain an attorney to enforce any of the terms of this Agreement, the Client agrees to pay any such attorneys’ fees and collection costs incurred by University.
- E. If paying for the Service with a payment card (e.g., VISA, MasterCard, PayPal, etc.), Client certifies the payment information provided to be accurate, current, and complete, and that Client has the lawful right to provide such information to University. Client expressly authorizes the University to collect its Fee for the Service by charging the payment card using payment information provided by the Client. Payment information submitted to the University is subject to the University’s Privacy Policy.

2. CONFIDENTIALITY

- A. The parties acknowledge that providing a quotation and providing the Services may require disclosure and exchange of proprietary or confidential information (“Confidential Information”). For the purposes of this Agreement, “Confidential Information” shall be defined as information (scientific or business), data, know-how, whether written or oral, technical or non-technical, as well as tangible materials, including without limitation, samples, specimens, models, drawings, or diagrams which a party receives from the other party.
- B. With respect to any and all Confidential Information which either party receives from the other, the receiving party agrees to: (i) use such Confidential Information only in connection with its performance of this Agreement; (ii) disclose such Confidential Information only to

employees or agents that agree to be bound by these confidentiality obligations or who are subject to policies regarding maintenance of confidential business information no less restrictive than the obligations herein; and (iii) take all reasonable precautions to prevent the disclosure of such Confidential Information to any third-party without the prior written consent of the providing party.

- C. Confidential Information does not include, and the obligations of confidentiality shall not apply to, information which: (i) is not clearly marked as confidential at the time of disclosure, or in the case of oral disclosure not identified as confidential at the time of disclosure and summarized in a writing marked confidential and delivered to the receiving party within ten (10) business days of disclosure; (ii) was known to the receiving party prior to receipt of any Confidential Information hereunder as set forth in written records; (iii) at the time of disclosure to the receiving party was in the public domain, or which after disclosure entered the public domain through no fault of the receiving party; (iv) is hereafter made available to the receiving party from any third-party with an apparent right to do so on a non-confidential basis; (v) is developed independently by the University or Client, as can be demonstrated by written records, without reliance on or use of the other party's Confidential Information; or (vi) is required by law, regulation, subpoena, government order or judicial order to be disclosed, provided the receiving party shall promptly notify the party who provided the information upon such request for disclosure (unless such notification is prohibited by law) and prior to such disclosure to permit the providing party to oppose same by appropriate legal action. The Client understands and acknowledges that the University is a public agency of the Commonwealth of Virginia and is subject to the Virginia Freedom of Information Act, Va. Code §2.2-3700 et seq.
- D. The confidentiality obligations of this Section 2 shall survive for a period of five (5) years following the performance of the Services.

3. PUBLICATIONS AND PUBLICITY

In any scholarly publications incorporating the results of the Services, the Client shall include an appropriate acknowledgment of the University. The Client agrees not to use the name of the University in any advertising or publicity material or to make any form of representation or statement which would constitute an express or implied endorsement by the University of any commercial product or service, or to authorize others to do so, without first having obtained written permission from the University.

4. INTELLECTUAL PROPERTY AND DATA RIGHTS

It is recognized and understood that rights to the existing inventions and technologies of the Client and the University are not affected by this Agreement, and that neither party shall have any claims or rights in or to such existing inventions and technologies by virtue of this Agreement.

5. LIABILITY

- A. TO THE FULLEST EXTENT ALLOWABLE UNDER APPLICABLE LAW, SERVICES AND DELIVERABLES PROVIDED TO CLIENT PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- B. The Client will indemnify and hold harmless the University from and against any and all losses, claims, demands, damages, liabilities, and costs incurred that directly or indirectly result from or arise in connection with: (i) any breach of this Agreement by the Client, its employees or agents; (ii) any negligent act or omission of, or breach of any applicable law by, the Client, its employees or agents, in the performance of its obligations under this

Agreement; and (iii) the Client's use, sale or distribution of, or any product liability (including, but not limited to, actions in the form of tort, warranty, or strict liability) or copyright or patent infringement actions related to, the Deliverables or Services provided by the University under this Agreement. This indemnity obligation does not apply to transactions where the Client is a state governmental entity which is prohibited by law from providing indemnity. Nothing contained in this Agreement shall be considered to be a waiver of the sovereign immunity of the University or the Commonwealth of Virginia.

- C. Except for the Client's indemnity obligations contained herein, in no event shall either party be liable for any indirect, incidental, special, consequential, punitive, or other damages resulting from performance or non-performance under this Agreement for any reason, including, but not limited to, damages for loss of profits, use, data or other intangibles, even if such party had been advised of the possibility of such damages.
- D. The obligations of this Section 5 shall survive the termination or expiration of this Agreement.

6. EXPORT CONTROLS

The Client acknowledges that the University may have students or employees who are foreign nationals who may be working with any materials, information or data the Client provides to the University The Client represents and certifies that it shall not disclose any information or provide materials to the University that are subject to either the International Traffic in Arms Regulations or the Export Administration Regulations (other than EAR99 data) without prior written notice to the University which, at its option, may decline the receipt of such information or material. The Client agrees to comply with all federal and state laws, rules and regulations related to the Services and this Agreement, including but not limited to the International Traffic in Arms Regulation and the Export Administration Regulations. The University reserves the right to refuse to provide any Services requested that, in its sole discretion, it deems inappropriate to provide in a nonprofit, academic environment.

7. HAZARDOUS MATERIALS

The Client shall notify the University and provide a current Material Safety Data Sheet (MSDS) for any delivery containing substances identified in the U.S. Federal Hazard Communication Standard 1910.1200. The University reserves the right to decline receipt of any such substance.

8. TERM AND TERMINATION

- A. The term of this Agreement shall commence upon Client's request for Services and conclude upon the completion of the Services and payment of the Fee due hereunder, or upon expiration of the quotation in the event no Services are performed.
- B. If a Client wishes to cancel the Services after it has accepting a quotation, it must immediately notify the University by phone or email. Notwithstanding the foregoing, if the Client cancels the Services after performance of the Services has commenced, the Client will remain responsible for the full Fee as set forth in the quotation.

9. NON-ASSIGNABILITY

Neither this Agreement nor any right or interest hereunder may be assigned or transferred by either party without prior written consent of the other party, except this Agreement may be assigned to a party that succeeds to all or substantially all of a party's business or assets whether by sale, merger, operation of law or otherwise.

10. INDEPENDENT CONTRACTOR RELATIONSHIP

The parties are at all times acting as independent contractors in the performance of this Agreement and not as employees or agents of the other party. This Agreement establishes a non-exclusive relationship between the parties and is not intended to establish, nor shall it be construed as establishing, a joint venture, teaming relationship, partnership, or other formal business arrangement between the parties.

11. DELAYS

With the exception of the Client's obligation to pay the Fee for the Services, neither party shall be liable for the failure to perform its obligations under this Agreement if such failure is occasioned by a contingency beyond such party's reasonable control, including but not limited to strikes or other labor disturbances, lockouts, riots, wars, earthquakes, fires, floods or storms. A party claiming a right to excused performance under this Section 11 within ten (10) business days of its knowledge of such contingency shall notify the other party in writing of the extent of its inability to perform, which notice shall specify the occurrence beyond its reasonable control that prevents such performance.

12. GENERAL PROVISIONS

This Agreement constitutes the entire agreement between the parties on the subject matter hereof, and supersedes all prior contracts, agreements, and understandings relating to the same subject matter between the parties. The headings appearing in this Agreement are for convenience and reference only and are not intended to, and shall not, define or limit the scope of the provisions to which they relate. The invalidity or unenforceability of any terms or provisions hereof in any jurisdiction shall in no way affect the validity or enforceability of any of the other terms or provisions in that jurisdiction, or of the entire Agreement in any other jurisdiction. No course of dealing between the parties or any delay on the part of either party in exercising any rights it may have under this Agreement shall operate as a waiver of any of the rights of such hereunder. This Agreement may not be modified except in a writing signed by an authorized representative of each party. This Agreement shall be construed under, and the rights of the parties hereto shall be governed by, the laws of the Commonwealth of Virginia, without regard to its conflict of laws principles.