

OLD DOMINION UNIVERSITY  
GENERAL TERMS AND CONDITIONS

- A. ADVERTISING: Contractor agrees that that no indication of such sales or services to the University will be used in product literature or advertising during the contract term of any contract award for supplies, equipment, or services resulting from this proposal.
- B. ADDITIONAL GOODS AND SERVICES: The University reserves the right to have the Contractor provide additional goods and/or services that may be required by the University during the Term of this contract. Any such goods and/or services will be provided under the same terms and conditions of this contract. Such additional goods and services may include other products, components, accessories, subsystems or services provided by the Contractor. These additional goods and services will be provided to the University at Favored Customer pricing.
- C. ANTITRUST: By entering into a contract, Contractor 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 Contract.
- D. APPLICABLE LAWS AND COURTS: This contract 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 contract shall be brought in the state or federal courts located in Norfolk, Virginia. To the extent any provision of the Agreement is prohibited by Virginia law, or is otherwise not authorized by Virginia law, due to the University'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.
- E. APPLICABLE LEGISLATION AND MANUAL: This contract is subject to the provisions of the Commonwealth of Virginia, specifically § 23-38.90 of the Code of Virginia and its associated Rules Governing the Procurement of Goods, Services, Insurance and Construction ("the Rules") and the Purchasing Manual for Universities of Higher Education and their Contractors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is accessible on the Internet at [www.odu.edu/procurement](http://www.odu.edu/procurement) under "Laws, Policies & Procedures".
- F. 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.
- G. ASSIGNMENT OF CONTRACT: This contract shall not be assignable in whole or in part without the written consent of the University.

- H. **AVAILABILITY OF FUNDS:** The University shall be bound hereunder only to the extent of the funds available or which may hereafter become available during each subsequent fiscal year and/or contract term, as applicable, and any requirement by Contractor for any total or partial compensation or payment by the University of unpaid fees, whether current or future, for lost profit and/or as liquidated damages in the event of early termination of the then current term if for other than breach by the University is prohibitive.
- I. **AUDIT:** Contractor agrees that they shall retain all books, records, and other documents relative to any resulting contract 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.
- J. **BACKGROUND CHECKS:** Contractor is responsible for conducting criminal background checks for any and all personnel proposed to work on the University's campus and must provide copies of same to the University's Contract Administrator. If Contractors employees and agents will be on the ODU campus, or have access to protected data as defined herein, Contractor must comply with the following: Contractor shall ensure that its employees, full-time or part-time, including newly hired, re-hired, seasonal, and/or temporary, who may have access to ODU confidential or proprietary information, or data about ODU 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 University Policy 6021 found at: <https://www.odu.edu/about/policiesandprocedures/university/6000/6021>
- K. **CHANGES TO THE CONTRACT:** During the term of the contract, including any and all applicable extensions and/or renewals, changes may be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The University may request and issue change orders within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract 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 Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the University a credit for any savings. Said compensation shall be determined by one of the following methods:
    1. By mutual agreement between the parties in writing; or
    2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the University's right to audit the Contractor's records and/or to determine the correct number of units independently; or
    3. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the University

with all vouchers and records of expenses incurred and savings realized. The University shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the University within thirty (30) days from the date of receipt of the written order from the University. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Purchasing Manual for Universities of Higher Education and their Contractors*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the University or with the performance of the contract generally.

- L. CONFLICT OF INTERESTS: The Contractor attests represents to the University that its entering into this Contract 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 Contractor will notify the University of any potential conflict of interests prohibited under law.
- M. CONTRACTUAL CLAIMS PROCEDURE: *The Rules* § 53 requires Contractors 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 Contractor'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. The Contractor must provide the written claim to:  
Assistant Director of Procurement  
Old Dominion University  
4401 Powhatan Ave  
Norfolk, VA 23529
  2. Although Contractor may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section 1 above, Contract must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Procurement if it wishes to pursue its claim.
  3. Upon receiving the written claim, the Assistant Director of Procurement will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Contractor. If such discussion is to be held, the Assistant Director of Procurement will contact Contractor and arrange such discussion. The manner of conducting such discussion will be as Assistant Director of Purchasing and Contractor 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. Contractor may appeal the decision to:  
Executive Director of Strategic Sourcing and Payment Solutions  
Old Dominion University  
4401 Powhatan Ave  
Norfolk, VA 23529
6. Upon receiving the written appeal, the Executive Director of Strategic Sourcing and Payment Solutions will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Contractor. If such discussion is to be held, the Executive Director and Assistant Director will contact Contractor and arrange such discussion. The manner of conducting such discussion will be as the Director of Procurement and Assistant Director and Contractor mutually agree.
7. The Executive Director of Strategic Sourcing and Payment Solutions will mail his or her decision to Firm within 60 days after the 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 contract. Contractor may not, however, file such claim unless and until it has complied fully with the procedure set forth in this provision.

N. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the University, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the University may have.

O. **DISCOUNTS:**

1. **Prompt Payment Discounts:** The University will pay within 30 days after acceptance. A prompt payment discount offered for prompt payment of (20) calendar days or longer will be calculated in determining net low proposal.
2. **Special Educational Or Promotional Discounts:** The Contractor shall extend any special educational or promotional sale prices or discounts immediately to the University during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

P. **DRUG-FREE WORKPLACE:** *(the Rules §11.)*

During the performance of the contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor'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 Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include 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 Contractor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a Contractor, 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 contract.

Q. EMPLOYMENT DISCRIMINATION: (the Rules §10.)

During the performance of the contract, the Contractor agrees that:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.
3. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
4. The contractor shall include the provisions of subdivisions 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

R. ENVIRONMENTAL LIABILITY: Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the Contractor, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, sub consultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of any resulting Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.

- S. E-VERIFY REQUIREMENT OF ANY CONTRACTOR: Pursuant to Code of Virginia, § 2.2-4308.2, any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with Old Dominion University to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such contract. Any such employer who fails to comply with these provisions may be debarred from contracting with Old Dominion University and any agency of the Commonwealth for a period up to one year. Such debarment may cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.
- T. EXCLUSIVITY: The University reserves the right to procure goods or services covered under the contract from a third party when, in the University's sole discretion, it is deemed to be in the University's best interest.
- U. EXTRA CHARGES NO ALLOWED: The contract price shall reflect all fees to be incurred for the performance of the contract, including all applicable freight and installation charges. Any additional fees that arise during the performance of the contract shall only be paid if approved by the University prior to incurring such fees.
- V. 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.
- W. 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.
- X. FINAL INSPECTION: At the conclusion of the work, the Contractor shall demonstrate to the authorized University representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.

- Y. GRAMM-LEACH-BLILEY ACT: If applicable, the Contractor 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.
- Z. GUARANTEE OF WORK:
1. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the owner.
  2. If, within the guarantee period, defects are noticed by the owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the owner rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the Contractor shall, promptly upon receipt of notice from the owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the owner:
  3. Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
    1. Make good all damage to the structure, site, equipment, or contents thereof, which is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contracts; and
    2. Make good any work, materials, equipment, contents of structures, and/or disturbance of the site in fulfilling any such guarantee.
    3. In any case, where in fulfilling the requirements of the contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.
  4. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the University may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.
  5. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the term of this section during the first year of the life of such special guarantee.
  6. Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the contract documents. This paragraph relates only to the specific obligation of the Contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the contract documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this contract.

7. In the event the work of the Contractor is to be modified by another Contractor, either before or after the final inspection, the first Contractor shall remain responsible in all respects under the guarantee of work and under any other warranties provided in the contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the Contractor modifying its work. Both the first Contractor and the Contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which he is modifying. If any Contractor shall claim that another Contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the Contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other Contractor. Any Contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the Contractor whose work he is modifying.

AA. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the University,, the Commonwealth of Virginia, and their officers, agents, and employees from any claims, damages, liability, injury, expense of loss, including defense costs and attorney's fees, arising from Contractor's negligence under this contract Accordingly, ODU shall promptly notify Contractor of any claim or action brought against ODU in connection with this Contract. Upon such notification, and at the request and direction of ODU 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.

BB. INDEPENDENT CONTRACTOR: Contractor is not an employee of the University, but is engaged as an independent contractor. The Contractor 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 Contractor's performance of this Contract. Nothing in this Contract will be construed as authority for the Contractor 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.

CC. INFORMATION TECHNOLOGY ACCESS: All electronic and information technology procured through this contract 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 Contractor 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 contract:

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.

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 Contractor 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.

- DD. IMMIGRATION REFORM AND CONTROL ACT OF 1986: Contractor 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.
- EE. NON-APPROPRIATION: Funding for any contract between the University and a Contractor 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 contract is not appropriated, whether in whole or in part, then the Contract may be terminated by the University effective the last day for which appropriated funding is available.
- FF. ORDER AND PAYMENT PROCESSING:
1. In most cases, the University shall issue eVA Purchase Orders for required performance and delivery against the contract.
  2. The Contractor shall be paid when (i) requested work is completed, (ii) the requested work is approved and accepted by the University, and (iii) Contractor has submitted to the Accounts Payable a **proper** invoice for the approved, accepted and completed work.
  3. The Contractor shall not receive payment for work found by the University to be unsatisfactory, or performed in violation of federal, state, or local laws, codes, ordinances, rules or regulations.

Note: It shall be the responsibility of the Contractor to safeguard those materials and/or equipment that have been "prepaid" by the University and shall also certify at the completion

of the project that same was either (i) used during the performance and shall also certify at the completion of the project, or (ii) turned over as property to the University.

4. Charge Card Payments:

1. In an effort to increase administrative efficiency and streamline the invoice and payment process, the University may elect to process those contracted goods/services less than \$5,000, as applicable, via use of the University's Small Purchase Charge Card ("PCard").
  2. In those instances deemed to be in "its best interest", the University may elect to process transactions via its 'Gold' PCARD, not to exceed transactions up to \$50,000 per order, or monthly transactions up to \$250,000 accumulative, unless otherwise approved and/or stipulated.
5. ePayables: Contractors are strongly encouraged to sign up for electronic payments. For more information about available payment options, contact University's Accounts Payable department at [invoice@odu.edu](mailto:invoice@odu.edu) or view <http://www.bankofamerica.com/epayablesvendors>.

6. Check or ACH:

1. All **proper** invoices shall be emailed to [invoice@odu.edu](mailto:invoice@odu.edu) and reference the ODU PO number on the invoice. Invoice requirements are included here: <https://www.odu.edu/vendors/responsibilities/invoice-requirements>
2. Invoices not meeting requirements may be returned to the vendor for correction.

GG. PAYMENT PROVISIONS:

1. By the University:

1. Prompt Payment: (the Rules §42.)

- a. The University shall promptly pay for the completely delivered goods or services by the required payment date.
- b. Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.
- c. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

2. Defect Or Impropriety In The Invoice Or Goods And/Or Services Received: (the Rules §43.)

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the University shall notify the Contractor of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.

3. Date Of Postmark Deemed To Be Date Payment Is Made: (the Rules §44.)

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

4. Interest Penalty; Exceptions: (the Rules §44.)

- a. Interest shall accrue, at the rate determined pursuant to subsection ii., on all amounts owed by the University to a Contractor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.
  - b. The rate of interest charged the University pursuant to subsection i. shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.
  - c. Notwithstanding subsection i., no interest penalty shall be charged when payment is delayed because of disagreement between the University and a Contractor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.
  - d. This section shall not apply to retainae on construction contracts that provides for progress payments, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a Contractor from receiving interest on such funds under an approved escrow agreement.
  - e. Notwithstanding subsection i., no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection 2. on amounts withheld that remains unpaid after seven days following the payment date.
5. To Contractor: Under any resulting contract, Contractor is hereby obligated:
- a. To submit all invoices for goods/services ordered, delivered and accepted directly to:
    - a. Old Dominion University  
Accounts Payable  
Rollins Hall, Room 202  
Norfolk, Virginia 23529;                      or
    - b. [invoice@odu.edu](mailto:invoice@odu.edu)
  - b. Elements of a proper invoice are provided on the University Payment Website in sections noting Invoice Requirements and Elements of a Proper Invoice. Invoices not inclusive of elements deemed as a proper invoice may be returned for correction. Additional information can be found: <https://www.odu.edu/vendors/responsibilities/invoice-requirements>.Any

payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- c. All goods or services provided shall be billed by the Contractor at the agreed to contract price.
- d. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the University shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the University of its prompt payment obligations with respect to those charges which are not in dispute.

2. To Subcontractors: (*the Rules §45.*)

Under any resulting contract, Contractor shall be obligated:

- 1. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the University for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- 2. To notify the University and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- 3. To pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the University, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the University.

HH. 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.

II. SEVERABILITY: The provisions of the contract shall be deemed to be severable, and should any or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

JJ. STATUTORY DAMAGES: ODU is not authorized to waive damages granted or otherwise available by statute.

- KK. SOVEREIGN IMMUNITY: ODU is an agency of the Commonwealth of Virginia and is afforded the protection of sovereign immunity under Virginia law. Any claims against ODU or the Commonwealth are subject to the requirements established under Virginia law for bringing such claims against ODU 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 contract shall be deemed to be or construed as a waiver of ODU's or the Commonwealth's sovereign immunity, or any other applicable requirements under Virginia law for bringing claims against ODU or the Commonwealth. The total cumulative liability of the University, its officers, employees, and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to this contract, shall not under any circumstance exceed payment of the maximum purchase price.
- LL. TAX EXEMPT: Sales to the Commonwealth of Virginia are exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- MM. TERMINATION WITH CAUSE:
1. In the event that the Contractor shall for any reason or through any cause be in default of the terms of the contract, the University may give the Contractor written notice of such default by certified mail/return receipt requested.
  2. Prior to termination of the contract, the University shall give the Contractor and its surety ten (10) calendar day's written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the University within said ten (10) days, the University may rescind the notice of termination. If Contractor does not, the termination for cause shall become effective at the end of the ten-day (10) notice period.
  3. In the alternative, the University may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the University finds acceptable. If at any time more than ten (10) days after the notice of termination, the University determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the University may immediately terminate the contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.
  4. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

5. Upon termination, the Contractor shall withdraw its personnel and equipment, cease performance of any further work under the contract, and turn over to the University any work in process for which payment has been made.
6. The University shall take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the University, together with any other expenses of terminating the contract and having it completed by others.
7. In the event of violations of law, safety or health standards and regulations, the contract may be immediately cancelled and terminated by the University and provisions herein with respect to opportunity to cure default shall not be applicable.

NN. TERMINATION BY UNIVERSITY FOR CONVENIENCE:

1. The University may terminate the contract at any time for convenience, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease work and remove from the project site all its labor forces and materials that the University elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as University may require to assign to the University the Contractor's interest in all subcontracts and purchase orders designated by University. After all such steps have been taken to University's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:
  1. All amounts due for work performed subsequent to the latest Request for Payment through the date of termination;
  2. Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination;
  3. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence; and
  4. Upon payment of the forgoing, University shall have no further obligations to the Contractor of any nature.
2. In no event shall termination for the convenience of the University terminate the obligations of the Contractor's surety on its payment and performance bonds.

OO. TESTING AND INSPECTION: The University reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

PP. TRANSPORTATION AND PACKAGING: Contractors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

- QQ. VIRGINIA FOIA: Nothing contained herein is intended to limit ODU's compliance with the Virginia Freedom of Information Act ("VFOIA"). For clarity, agreements and pricing between ODU and its vendors are not considered to be exempt from VFOIA requests.
- RR. VIRGINIA MINIMUM WAGE ACT: All Contractors must comply with the state and federal minimum wage requirements. Every Contractor 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>.
- SS. WAIVER: 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, ODU 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 ODU may have against another party nor may ODU 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.