

AGREEMENT

This Agreement, executed this 23rd day of October 2017, by and between the Rector and Visitors of the University of Virginia, (the "University") and Nycom, Inc. ("Nycom").

TERM

The term of this Agreement will be for five years effective upon execution of this Agreement, with the ability to renew on the same or similar terms and conditions, for one additional five-year period if mutually agreeable to the University and Nycom. Nycom and the University will mutually agree at least 180 days prior to each renewal option whether to renew the terms of this Agreement.

WITNESS

By its Request for Proposal (RFP) FM032917 for Laboratory Casework, Fume Hoods and Accessories dated March 29, 2017, the University requested proposals from firms to provide Laboratory Casework, Fume Hoods and Accessories (the "Goods and Services"). In response to the RFP, Nycom submitted a written proposal dated May 1, 2017, and a letter responding to negotiations dated July 10, 2017 and August 28, 2017. The parties, having negotiated concerning the Goods and Services wish to express in this Agreement the basis on which Nycom will provide the Goods and Services to the University.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

I. Contents

These documents are hereby incorporated into this Agreement:

- A. The RFP dated March 29, 2017, including Attachments 1, 2, 3, 4, and 5;
- B. Agreement Attachment 1, Contractual Provisions;

- C. Agreement Attachment 2, Procedure for Resolution of Contractual Claims;
- D. Nycom's Proposal dated May 1, 2017; and
- E. Nycom's response to negotiations with the University, consisting of a letter dated July 10, 2017 and August 28, 2017 from Jonathan Nystrom (Nycom) to Frank J. Messina (University).

To the extent that the terms of the various Agreement documents are in conflict, the terms of this Agreement, the RFP, Agreement Attachment 1, and Agreement Attachment 2 will prevail over all other Agreement documentation.

II. Specific Provisions

Nycom will provide both new and refurbished laboratory casework, fume hoods and accessories on an as-needed basis. These services must be provided in a competent manner and at no time adversely affect the daily operations of the University. Nycom will demonstrate flexibility in accommodating new and changing requirements, while providing reliable customer service and a product of proven stability. Nycom will provide services as specified and in accordance with all applicable building and safety codes, local, state and federal standards, University project documents (e.g. plans, specifications, etc.), the University's Facilities Design Guidelines, see <http://ubo.virginia.edu/Pages/default.aspx>, and coordinate work around University schedules, special events and holidays.

Nycom will provide, but is not limited to providing, the following Products and Services:

A. Products

- 1. Nycom will furnish laboratory casework, fume hoods, work surfaces and accessories from a single manufacturer, complete with accessories, trim, finish, fasteners and other items/products needed for a complete installation, to maintain consistent quality, construction, design, use and effect. These items/products may include, but are not limited to:
 - a. Wood casework
 - b. Plastic laminate casework

- c. Phenolic resin casework
 - d. Steel casework
 - e. Stainless steel casework
 - f. Steel casework with wood or p-lam door & drawer fronts
 - g. Wood casework with steel shelves/drawers
 - h. Fully-engineered and tested adaptable furniture systems
 - i. Furniture to accommodate ADA requirements
 - j. Fully-engineered and tested mobile casework systems
 - k. Table-based systems
 - l. Plastic laminate, epoxy resin, phenolic resin, stainless steel, edge grain maple and ceramic work surfaces
 - m. Bench-top and floor mounted fume hoods with Underwriters Laboratories (UL) 1805 label
 - n. ADA compliant fume hoods
 - o. Filtered fume hoods
 - p. Specialty hoods (radioisotope, perchloric, demonstration, etc.)
 - q. Canopy hoods, snorkels and fume enclosures
 - r. Bio-safety cabinets
 - s. Acid storage cabinets and flammable liquid storage cabinets
 - t. Laboratory service fixtures and accessories
 - u. Epoxy resin and stainless steel sinks and glassware drying racks
 - v. Laboratory gas fixtures, plumbing fixtures, faucets and fittings, complete with installation accessories
 - w. Electrical fixtures, devices and fittings, complete with installation accessories
 - x. Laboratory refrigerators, ice machines, freezers, glasswashers
 - y. Laboratory carts, shelving, racks and accessories to accommodate storage and accessibility needs.
2. Nycom's equipment manufacturer must have a modern plant with proper tools, dies, fixtures, and a skilled workforce to produce high-quality steel

and/or wood laboratory casework, fume hoods, work surfaces and accessories.

3. Nycom will be fully responsible for shipping and incur shipping expense, retain title during transit, and file damage claims as necessary.
4. In addition to providing laboratory casework, fume hoods and accessories, Nycom may provide goods/services deemed advantageous for inclusion in projects which include, but are not limited to:
 - a. Architectural Wall Systems
 - b. Seating
 - c. Laser Curtains
 - d. Visual Display Surfaces

B. Services

Nycom will:

1. Provide the following in a timely and professional manner:
 - a. Project design assistance,
 - b. Computer Aided Design ("CAD") plans, drawings and elevations for projects (conceptual, construction and as-built),
 - c. Large scale plans, drawings and elevations of proposed projects (conceptual, construction and as-built) for individual casework units, cross-sections, rough-in and anchor placements, framing system details, locations of blocking and reinforcements required for installation, tolerances and clearances, part numbers, unit dimensions, relation of units to surrounding walls, windows, doors, and other building components for each project,
 - d. Product data/ submittals for specified casework, fume hoods and accessories. The required data/ submittals will include, but may not be limited to, component dimensions, configurations, construction details, joint details and attachments, performance and maintenance details, and utility and service requirements,

- e. Removal, refurbishment, and re-installation of existing casework (provide in-fill materials as required), and
 - f. Estimates for proposed goods and services with line item pricing.
2. Provide on-site project management personnel. The on-site project manager will act as the “day to day” contact for questions related to the project. If the project manager is unavailable, Nycom’s account manager will be the next point of contact.
 3. Provide factory-certified installation personnel (certified by the manufacturer).
 4. Conduct an on-site pre-installation conference with the University’s designated representative(s) to ensure all materials, casework, equipment and accessories needed for project completion are present and free from defect prior to installation. The University will coordinate the exact dates/ times of the pre-installation conference with Nycom. In the event of shortages and/or damage, Nycom will provide a written corrective action plan to the University’s designated representative following the conference.
 5. Coordinate construction activities with other building trades and project activities to ensure an efficient and orderly installation. Nycom will install casework, fume hoods, equipment and/ or accessories in accordance with manufacturer’s written instructions and drawings approved by the University’s designated representative.
 6. Schedule delivery of casework, fume hoods and accessories so that spaces are sufficiently complete to accommodate installation immediately after delivery.
 7. Deliver, uncrate, set in place, install plumb, level, align, and securely anchor to the building and adjacent casework and/ or equipment, all specified casework, work surfaces, fume hoods, equipment and accessories. Filler strips will be scribed in place for accurate fit with

fasteners concealed where practical. Access panels will be easily removable and include secure reattachment methods.

8. Install casework, fume hoods and accessories in compliance with Scientific Equipment and Furniture Association ("SEFA") recommended practices and construction documents.
9. Provide field-testing of fume hoods after completing installation to demonstrate proper operation. Test hoods according to the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") standard to verify performance. If any hood tested fails to perform as specified, field retest hoods as directed by the University's designated representative to ensure proper performance. Nycom will coordinate all testing with the University's Office of Environmental Health and Safety.
10. Guarantee all materials and workmanship for a period of two years from the date of final acceptance by the University's designated representative or initial use of equipment unless otherwise specified. Any defects due to the use of improper materials or workmanship occurring within the two year period from date of final acceptance, or initial use of equipment, must be rectified by Nycom at the firm's expense upon notification from the University's designated representative.
11. Ensure project/work sites are in such an orderly fashion as not to unduly interfere with the progress of Nycom's work, the work of other contractors, or University Facilities Management personnel. Nycom will assist in daily clean-up efforts of the project/work site, associated staging areas and delivery paths. Nycom will remove and dispose of debris and waste materials in a lawful manner, and adhere to the University's dust control policies to prevent the transmission of dust into adjacent areas.
12. Provide necessary protective measures to prevent damage of casework, fume hoods and accessories from exposure to other construction activities.

Nycom will protect, adjust, clean repair, remove and/ or replace finished surfaces as follows:

- a. Protect from soiling and/ or damage during handling and installation with a protective covering of polyethylene film or other suitable material,
 - b. Protect countertops, table tops, shelf and sink materials throughout the construction period/ process with a minimum ¼ inch thick corrugated cardboard completely covering the top and securely taped to the edges,
 - c. Adjust doors, drawers, hardware, fixtures, and other moving/operating parts to align and operate smoothly without warp or bind and ensure contact points meet accurately. Lubricate operating hardware as recommended by manufacturer,
 - d. Clean finished surfaces, including both sides of glass; touch up as required; and remove or refinish damaged or soiled areas to match original factory finish; as approved by University's designated representative, and
 - e. Repair, remove and/ or replace improper materials or defective workmanship upon completion of installation and notification from the University's designated representative. Touch up any casework, fume hoods or accessories as requested by the University's designated representative.
13. Possess the ability to bond larger projects if required.
 14. Provide a locally leased storage facility with a computerized inventory system to accommodate the storage of routinely purchased casework, tops, fume hoods, bio-safety cabinets, equipment and accessories.
 15. Not disturb any existing casework, fume hoods or accessories until the University's Office of Environmental Health and Safety has fully decommissioned same casework or accessories; and a statement verifying

such decommissioning has been posted on the laboratory door by the University's Office of Environmental Health and Safety.

16. Take proper safety and health precautions to protect, at a minimum, all of its work, Nycom's employees, the public, and University personnel. Nycom will ensure all personnel wear appropriate personal protective equipment for the project site/project.
17. Provide uniforms for personnel assigned to projects on behalf of Nycom. Uniforms will contain Nycom's name and must be worn at all times while on University property to designate affiliation with Nycom.
18. Provide photo identification badges for all personnel assigned to a University project on behalf of Nycom. Badges must contain the name of Nycom as well as the name of the individual employee. Badges must be worn at chest level at all times while on University property. The University requires such identification for security reasons and access will be prohibited if University personnel do not recognize the identification.
19. Adhere to the University's No Smoking or Vaping Policy, see <https://uvapolicy.virginia.edu/policy/SEC-028> , and
20. Obtain parking permits from the University's Department of Parking and Transportation for all vehicles parked on University Grounds. At no time will Nycom utilize Health System Parking Garages. These areas are intended for the sole use of patients, visitors and University employees. Parking permits, tickets and/ or towing charges are the sole responsibility of Nycom. The University is not liable for any damage or expense resulting from illegally parked vehicles.
21. Accept assignment of their scope of work from a General Contractor for orders issued by the University and/or Virginia Association of State College and University Purchasing Professionals ("VASCUPP") member institution.
22. Annually support the VASCUPP SWaMfest Conference as a Silver Level Sponsor (\$1,000.00) for the duration of this agreement.

C. Pricing/Fees

1. Nycom will provide a fixed discount schedule off a published list price for all products and services, and provide discount schedules by product type as well as order size. Price increases for materials may occur no more than once per year, typically on or about May 1st, and will be based on manufacturers' price list increase. Any rate increases require prior written approval of the University.
2. Nycom will provide fixed hourly installation rates with minimal annual escalation rates. Installation rates/costs will be included with pricing at the time of quotation, showing the total number of installation hours times the installation rate. The following installation rates are applicable through May 1st, 2018:
 - a. \$50.00 per hour for work performed 7:00 a.m. to 5:30 p.m. Monday through Friday.
 - b. \$75.00 per hour for work performed before 7:00 a.m. or after 5:30 p.m. Monday thru Friday, or on weekends and/or holidays.Thereafter rates may be adjusted once per year, typically on or about May 1st, and will not exceed the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), all items in the South urban area, not seasonally adjusted, for the preceding twelve months for which statistics are available. Any rate increase requires prior written approval of the University and will not exceed 3% per year.
3. Engineering, submittal drawing and design fees are included with pricing at the time of quotation. Nycom may request reimbursement for submittal fees upon delivery of approval drawings and submittal information on large projects.
4. Shipping costs (to be included with the pricing at time of quote) will be prepaid and added to invoices, with all shipments FOB destination.

5. Nycom will provide offsite storage of materials at no charge for up to sixty days after a mutually agreed upon original ship date. After sixty days the University may pay for materials and continue to store them for up to six months at no additional charge, or must accept delivery of materials. Long term storage of materials may be mutually agreed to on a case by case basis. Any such plan(s) require prior written approval of the University and must include separate line item pricing from Nycom.
6. The University may procure additional Products and Services ("Services") from Nycom throughout the term of this Agreement. These Services include, but are not limited to, architectural millwork, miscellaneous lab equipment, testing/certification, and contracting services. The exact pricing of these Services will be determined at the time of purchase and be provided under Most Favored Nations Pricing, identified in Attachment 1, Contractual Provisions, Section X., Favored Nations.
7. Pricing for all goods and services proposed or furnished must be provided via separate line item pricing. A lump sum/package pricing method is not acceptable.
8. The following discount schedules are firm for the initial term of this Agreement:

| <i>Discounts taken from Kewaunee Scientific Published List Price</i> | | | | | | | | | |
|--|---------------------------------|---------------------|--------------------------|---------------------|---------------------|-----------------------------------|-----------------------------------|---------------------------|---------------------------|
| <i>Discounts should be taken by total list price <u>per product line</u>.</i> | | | | | | | | | |
| <u>Product List Price</u> | <u>Wood and Laminate</u> | <u>Steel</u> | <u>Enterprise</u> | <u>Alpha</u> | <u>Hoods</u> | <u>Technical Furniture</u> | <u>Bio Safety Cabinets</u> | <u>Epoxy Resin</u> | <u>Accessories</u> |
| \$0-\$15,000 | 46.0% | 53.9% | 53.9% | 53.9% | 53.9% | 53.9% | 32.5% | 58.7% | 53.9% |
| \$15,001-\$100,000 | 63.1% | 65.9% | 65.9% | 65.9% | 65.9% | 65.9% | 38.0% | 64.5% | 65.9% |
| \$100,001-\$200,000 | 67.1% | 71.1% | 71.1% | 71.1% | 71.1% | 71.1% | 44.5% | 68.4% | 71.1% |
| \$200,001+ | 72.1% | 74.6% | 74.6% | 74.6% | 74.6% | 74.6% | 44.5% | 69.5% | 74.6% |

| <i>Discounts taken from Manufacturers Published List Price</i> <i>Discounts should be taken by total list price per product line.</i> | | |
|--|----------------------------------|------------------------|
| <u>Product</u> | <u>Product List Price</u> | <u>Discount</u> |
| Seating | \$0 - \$40,000 | 39.2% |
| | \$40,001 - \$80,000 | 43.4% |
| | \$80,001 + | 47.1% |
| NXTWall Wall Components | \$0 - \$50,000 | 38.5% |
| | \$50,001 - \$200,000 | 41.5% |
| | \$200,001 + | 42.9% |
| Nello Wall Wall Components | \$0 - \$125,000 | 56.0% |
| | \$125,001 - \$500,000 | 61.9% |
| | \$500,001 - \$1,250,000 | 67.7% |
| | \$1,250,001 + | 72.1% |
| Kentek Wall Components | \$0 - \$10,000 | 3.2% |
| | \$10,001 - \$50,000 | 9.0% |
| | \$50,001 + | 11.1% |
| Platinum Systems Wall Components | \$0 - \$10,000 | 46.8% |
| | \$10,001 - \$50,000 | 52.0% |
| | \$50,001 + | 54.3% |

Notes:

- Discount prices do not include installation, freight, bond or any applicable taxes, which will be line item additions based on published freight rate schedule and Nycom Installation Estimate Form.
- Discounts above represent minimum discounts to be offered. Greater discounts may be offered due to manufacturing efficiencies, factory work load, promotions etc.
- It is the sole responsibility of Nycom to document any/all price increase requests. All price increases require 10 day written notice and prior approval of the University. Nycom may apply a 3% escalator per year to a current years published price list for estimating purposes of projects scheduled to deliver beyond a current years published price list.

D. Invoicing

Nycom may submit invoicing on a monthly basis based on each project contract or purchase order. Nycom will submit one original invoice referencing the correct purchase order number to the appropriate University Accounts Payable Division at:

University of Virginia
Facilities Management
Accounting Operations
P. O. Box 400726
Charlottesville, Virginia 22904-4726
Fm-finance-invoices@list.mail.virginia.edu

Or

University of Virginia
Accounts Payable
P. O. Box 400197
Charlottesville, Virginia 22904-4197

E. Contract Administrator

The individual named below will serve as the Contract Administrator and will be the point of contact at the University for day-to-day operations under this Agreement. The Contract Administrator cannot approve amendments or price changes to this Agreement. NYCOM will channel all communications through:

Melanie Bree Knick
Project Services Associate Director for Construction
Facilities Management Department
University of Virginia
575 Alderman Road
P O Box 400726,
Charlottesville, VA 22904-4726
Phone: 434-924-7153
Email: mbs3s@virginia.edu

Nycom will not make any commitments or comments, or actions on behalf of the University without the explicit direction of the Contract Administrator. The University reserves the right to change its Contract Administrator, upon notice to Nycom.

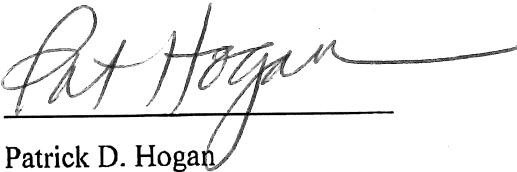
F. Ordering Procedures

The University does not place verbal orders for the Goods and Services. The University may only place orders for the Goods and Services by issuing a formal written Purchase Order in advance of Nycom's provision of the Goods and Services. Accordingly, at the University's request, Nycom 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 Nycom 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 Nycom to provide the Goods and Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If Nycom 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.

ACCEPTANCE

**For the Rector and Visitors
of the University of Virginia**



Patrick D. Hogan
Executive Vice President and
Chief Operating Officer

11/3/17
Date

For Nycom Inc.



Jonathan F. Nystrom
CEO

10/19/2017
Date

PO #1906999

Attachment 1
Contractual Provisions

A. Nondiscrimination

During the performance of this Agreement, Nycom will comply with the contract provisions contained in Section 2.2-4311 (1) & (2) of the Code of Virginia or any successor provisions which may be applicable to this Agreement. Also, in accordance with Section 2.2-4343.1, the University does not discriminate against faith-based organizations.

B. Conflict of Interests

Nycom 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 (Va. Code 2.2-3100 *et seq*), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 *et seq*), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 *et seq*) or any other applicable law or regulation.

C. Assignment

Neither party to this Agreement will have the right to assign this Agreement in whole or in part without the prior written consent of the other.

D. Amendments

No amendment of this Agreement will be effective unless it is reduced to writing and executed by the University's Director of Procurement and Supplier Diversity Services and by the individual signing Nycom's proposal or by other individuals named by either party as specified in Section E, Notices below. If Nycom deviates from the terms of this Agreement without a written amendment, it does so at its own risk.

E. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt; or (4) if sent by facsimile, when received (as verified by sender's machine) if delivered no later than 4:00 p.m. (receiver's time) on a business day or on the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or on a non-business day. All such notices will be addressed to a party at such party's address or facsimile number as shown below.

If to the University:

Eric N. Denby
Director of Procurement and Supplier Diversity Services
Carruthers Hall
University of Virginia
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202
Fax: (434) 982-2690

If to Nycom:

Jonathan F. Nystrom
CEO
Nycom Inc.
14200 Michaux Glen Drive
Midlothian, Virginia, 23113
Fax: (804) 794-3062

F. Independent Contractor

Nycom is not an employee of the University, but is engaged as an independent contractor. Nycom 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 Nycom's performance of this Agreement. Nothing in this Agreement will be construed as authority for Nycom 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.

G. Workers' Compensation and Employers' Liability

Nycom will (i) maintain Employers Liability coverage of at least \$100,000 and (ii) comply with all federal or state laws and regulations pertaining to Workers' Compensation Requirements for insured or self-insured programs.

H. Drug-Free Workplace

Nycom, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 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, Nycom agrees to 1) provide a drug-free workplace for Nycom's employees; 2) 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 Nycom's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of Nycom that it maintains a drug-free workplace; and 4) 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 vendor.

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 Nycom, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

I. 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>.

Additionally, in accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

NON-VISUAL ACCESS TO TECHNOLOGY: All information technology (the "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:

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

Compliance with the foregoing non-visual access standards will not be required if the Director of Procurement and Supplier Diversity Services, University of Virginia determines that 1) the Technology is not available with non-visual access because the essential elements of the Technology are visual and 2) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual 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 will permit the installation and effective use of non-visual access software and peripheral devices.

If requested, this Agreement must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

J. 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 Nycom (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. Nycom 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 any Agreement resulting from the RFP and will have full ownership and beneficial use free and clear of claims of any nature by any third party including without limitation copyright infringement claims. Nycom 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.

K. eVA Business To Government Registration

The eVA Internet electronic procurement solution, web site portal www.eva.virginia.gov, is the Commonwealth of Virginia's comprehensive electronic procurement system. The

portal is the gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA. All firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution. Nycom is required to register in the eVA Internet e-procurement solution prior to an award being made.

L. eVA Transaction Fee

Nycom agrees that it is a registered eVA vendor and subject to an eVA transaction fee, for which Nycom will be invoiced by Commonwealth of Virginia, Department of General Services. Additional information is available at www.eva.virginia.gov.

M. Contractor License Requirements

State statutes and regulatory agencies require that some firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. If firms provide 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. It is the firm's responsibility to comply with the rules and regulations issued by the appropriate State regulatory agencies.

A copy of the license must be furnished upon request to the University or VASCUPP member institution.

N. Goods and Services

During the term of this Agreement, Nycom will provide for the University the goods and services offered to the University in its proposal and/or any addenda to its proposal which has been approved in writing by the University and as may be further specified by the University in writing when it selected Nycom.

O. Waiver

No waiver of any right hereunder will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right hereunder will prevent a later exercise of such or any other right.

P. Indemnification

Nycom will indemnify and hold harmless The Commonwealth of Virginia, The Rector and Visitors of the University of Virginia, and its agents, employees and officials from any and all costs, damage or loss, claims, liability, damages, expenses (including, without limitation, attorneys' fees and expenses) caused by or arising out of the performance or non performance of this Agreement by Nycom or its agents or subcontractors, including the provision of any services or products. Nycom warrants that the products, goods and services provided the University may be used by the University without being in violation of any copyright, patent or similar property right or claim by others and will defend, indemnify and hold harmless the University (its employees and agents) from and against any such claim.

Q. Governing Law

This Agreement will be governed in all respects by the laws of the Commonwealth of Virginia.

R. Termination

If Nycom fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University, does not correct the deficiency, to the University's satisfaction within a reasonable period of time, not to exceed five calendar days unless otherwise agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to Nycom. Nycom reserves the right to terminate this Agreement within 60 calendar days upon written notice to the University. Any order in process at the time of termination will be completed by Nycom under the conditions set forth in this Agreement.

S. Non-Appropriation

Funding for any Agreement between the University and Nycom 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 this Agreement may be terminated by the University effective the last day for which appropriated funding is available.

T. Right of Audit

The University reserves the right to audit or cause to be audited Nycom's books and accounts regarding the University's account at any time during the term of this Agreement and for three years thereafter. Nycom will make available to the University all books and records relating to performance of this Agreement as may be requested during said period. This specifically includes, but is not limited to, the right of the University to require that Nycom perform self-audits within reasonable parameters established by the University.

U. Contractual Claims

This Agreement is subject to the University's policy on Contractual Claims which is provided as Attachment 2: Procedure for Resolution of Contractual Claims.

V. Insurance

Listed below is the insurance Nycom must maintain as part of this Agreement. In no event will Nycom construe these minimum required limits to be its limit of liability to the University.

Commercial General Liability:

Nycom and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of \$1,000,000 per occurrence and \$3,000,000 aggregate with coverage for the following:

{X} Premises/Operations {X} Products/Completed Operations
{X} Contractual {X} Independent Contractors
{X} Additional Insured*

Automobile Insurance:

Nycom and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of \$1,000,000 per occurrence with the following coverages for vehicles operated by its employees.

{X} Any Automobile {X} Owned and Non-Owned Automobiles

Umbrella/Excess Liability:

Nycom and any Subcontractor will maintain excess liability coverage of at least \$2,000,000 per occurrence that provides coverage uniform with the underlying general liability insurance.

*Additional Insured:

The University will be named as an Additional Insured, and the proper name is: "The Commonwealth of Virginia, and the Rector and Visitors of the University of Virginia, its officers, employees, and agents."

W. Cooperative Purchasing / Use of Agreement by Third Parties

It is the intent of this Agreement to allow for cooperative procurement. Accordingly, any public body (to include government/state agencies, political subdivisions, etc.), cooperative purchasing organizations, public or private health or educational institution, or any University related foundation may access the Agreement if authorized by Nycom.

Participation in this cooperative procurement is strictly voluntary. If authorized by Nycom, the Agreement may be extended to the entities indicated above to purchase goods and services in accordance with the Agreement. As a separate contractual relationship, the participating entity will place its own orders with Nycom and will fully and independently administer its use of the Agreement to include contractual disputes, invoicing and payments without direct administration from the University. No

modification of the Agreement or execution of a separate agreement is required to participate; however, the participating entity and Nycom may modify the terms and conditions of the Agreement to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and Nycom.

Nycom will notify the University in writing of any such entities accessing the Agreement. Nycom will provide semi-annual usage reports for all entities accessing the Agreement. The University will not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by Nycom to extend the Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of the Agreement no matter the circumstances.

Use of the Agreement does not preclude any participating entity from using other agreements or competitive processes as needed.

X. Favored Nations

Nycom represents that the prices, terms, warranties, and benefits specified in its proposal are comparable to or better than the equivalent terms being offered by Nycom to any present customer.

Y. The University's Authorized Representatives

The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to Nycom by the University's Director of Procurement and Supplier Diversity Services.

Z. Purchasing Manual

This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Its Vendors" and any

subsequent revisions, which is available on Procurement and Supplier Diversity Service's web site at: <https://vascupp.org/hem.pdf>

AA. Small, Disadvantaged, Women-owned and Minority (SWaM) Business Reporting

Nycom will identify and fairly consider small, disadvantaged, woman-owned or minority firms for subcontracting opportunities when qualified SWaM firms are available to perform a given task in performing for the University under this Agreement. Nycom 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. Nycom will submit the quarterly SWaM business reports to:

Lorie Strother
SWaM Contract Administrator
Procurement and Supplier Diversity Services
E-mail: ljs8n@virginia.edu

The quarterly SWaM business reports will contain this information:

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

BB. Unauthorized Alien Use

Nycom warrants that it does not knowingly employ an "unauthorized alien," as such term is defined in the federal Immigration Reform and Control Act of 1986. Nycom furthermore agrees that, during the term of this Agreement, it will not knowingly employ an unauthorized alien.

CC. Marketing

The University encourages Nycom to appropriately and specifically market itself to applicable end-using University departments that may be interested in Nycom's Goods

and Services. However, Nycom will not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that Nycom engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement.

DD. Future Goods and Services

The University reserves the right to have Nycom provide additional goods and/or services under the same pricing, terms, and condition. Such additional Goods and Services may include other products, components, accessories, subsystems or related services that are newly introduced during the term of this Agreement. Such newly introduced additional Goods and Services will be provided to the University at favored nations pricing, terms, and conditions.

EE Payment Terms

Nycom agrees to Net 45 day payment terms.

Attachment 2

Procedure for Resolution of Contractual Claims

The Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments 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 contractors 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:

A. Nycom must provide the written claim to:

Assistant Director of Procurement and Supplier Diversity Services
University of Virginia
1001 North Emmet Street
P. O. Box 400202
Charlottesville, Virginia 22904-4202

B. Although Nycom may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section A above, Nycom must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Procurement and Supplier Diversity Services if it wishes to pursue its claim.

C. Upon receiving the written claim, the Assistant Director of Procurement and Supplier Diversity Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Nycom. If such discussion is to be held, the Assistant Director of Procurement and Supplier Diversity Services will contact Nycom and arrange such discussion. The manner of conducting such discussion will be as the Assistant Director and Nycom mutually agree.

D. The Assistant Director of Procurement and Supplier Diversity Services will mail his or her decision to Nycom within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.

E. Nycom may appeal the decision to:

Director of Procurement and Supplier Diversity Services
University of Virginia
Carruthers Hall
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202

by providing a written statement explaining the basis of the appeal, within 15 days after Nycom's receipt of the decision.

F. Upon receiving the written appeal, the Director of Procurement and Supplier Diversity Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Nycom. If such discussion is to be held, the Director of Procurement and Supplier Diversity Services will contact Nycom and arrange such discussion. The manner of conducting such discussion will be as the Director of Procurement and Supplier Diversity Services and Nycom mutually agree.

G. The Director of Procurement and Supplier Diversity Services will mail his or her decision to Nycom within 60 days after the Director of Procurement and Supplier Diversity Services receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

H. Nothing in this Attachment 3 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; provided, Nycom may not file such claim unless and until it has complied fully with the procedure set forth in this Attachment 3.