

OLD DOMINION UNIVERSITY

STANDARD CONTRACT

Contract No. 16-221-12-HRS

This contract entered into this 17th day of February, 2016 by **ProctorU, Incorporated** (hereinafter the "Contractor"), and **Old Dominion University** (hereinafter the "University").

WITNESSETH that the Contractor and the University, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

1. **PERIOD OF PERFORMANCE:**

- a) The term of this Agreement will commence on February 17, 2016, and expire on June 30, 2017 ("Initial Term")
- b) At the conclusion of the Initial Term, this Agreement may be renewed for up to four (4) 12-month periods with sixty (60) days written notice, and subject to the parties' mutual concurrence and negotiation of any acceptable fee structure.
- c) Subsequent renewal periods shall commence on July 1 of associated year, and remain in effect for twelve (12) months, expiring each year on June 30th
- d) Each renewal period shall be governed by the then current Agreement, unless otherwise modified and agreed to in writing.
- e) The University reserves the right to renegotiate annual costs or cancel service requirements as needed without penalty.

2. **ENTIRE AGREEMENT AND AMENDMENTS:**

- a) The following documents, by inclusion and/or reference, shall constitute the *Contract Documents* for this Agreement as follows:
 1. This fully executed agreement; and
 2. The University's Request for Proposal ("RFP") #16-221-12-HRS dated September 21, 2015;
 3. Contractor's response to referenced RFP dated October 2, 2015; and
 4. Agreed to pricing structure for Online Proctoring services stated in BAFO email from Mr. William Kahl dated February 1, 2016.
- b) In the event of any conflict between this agreement and any of the above referenced documents, the provisions of this Agreement shall control.

3. **SCOPE OF SERVICES:**

The Contractor shall work collaboratively with the University in expanding its current program offerings to provide live, on-line proctored testing services to students for the University's Distance Learning programs.

Contractor Responsibilities:

Contractor will, at a minimum, be responsible for providing the following:

- a) Online proctoring services that are available close to 24 hours a day, and seven days a week (excluding holidays).
- b) A browser-based solution that:
 - 1) provides audio and video connections, and may include with a small applet download to connect test-takers with screen-sharing technology.
 - 2) Works seamlessly alongside any Learning Management System ("LMS") without integration, including Blackboard, Canvas, Desire2Learn, etc.

- 3) For Faculty 'ease of use', a user interface to schedule exams, and a
 - 4) way for the Faculty to easily edit and update testing instructions to be shared with students.
- c) Live Proctors that are highly qualified, skilled and trained, that:
- 1) Are linked to test-takers in real time with live audio and video connections that allows for Proctors to monitor both what the test-taker is doing in their testing environment and what they are doing on their computer.
 - 2) Receive on-going training and one-on-one coaching.
 - 3) Have passed a criminal background check and a Family Educational Rights and Privacy Act (FERPA) training course.
 - 4) Have at least one (1) year customer service experience and have passed the ProctorU in-house technical aptitude exam.
 - 5) Are blind-audited four-to-six times monthly, and receive monthly performance reports.
- d) Defined and refined processes to authenticate the identity of the test taker(s) via multi-factored process using the strongest identity authentication methods in the industry, as follows:
- 1) The Proctor will first snap a photograph of the test-taker to be stored in the personal profile of each individual test-taker, repeated for each distinct proctoring session.
 - 2) Proctor review and verification of a government issued identification card.
 - 3) Administration of a short authentication quiz, with data for challenge questions derived from the Acxiom U.S. consumer database, requiring test-taker to correctly answer two of the four questions for passage.
 - 4) Proctor's verbal and 'chat' instructions to the test-taker of the rules for the exam, requiring the test-taker to agree to the rules in writing.
 - 5) Via use of a webcam and prior to exam begins, Proctor conducting a reflective surface and a 360 degree view of the test-taker's testing environment using their webcam, including full view of test-taker's desk, computer/monitor and any peripheral equipment.
 - 6) Proctor monitoring of test-taker login to the respective LMS.
 - 7) After successful test-taker login, Proctor entry of the appropriate. University provided 'password'.
- e) A blended solution of technology, people and process to proctor exams, that:
- 1) May include up to (11) different employees assigned to a test-taker to assure each session is properly monitored and there are no issues, with each session designed to have one-on-one interaction between a student and a staff member at various points during the session with the test-taker always being monitored by at least (1) of the Contractor's staff member.
 - 2) Can accommodate additional time or other necessities as dictated by educational accessibility requirements through one-on-one coordination with the University via Voluntary Product Assessment Template, or VPAT, as well as following Web Content Accessibility Guidelines (WCAG) Level AA.
 - 3) Has clear and established clear protocols for addressing suspected

academic integrity breaches, which may include:

- (i) Evidence collection through video recordings, screenshots and/or chat log documentation.
- (ii) Interrupting the test-taker to rescan their workspace and room.
- (iv) Closing out a webpage, or any other action deemed necessary to determine if a breach has occurred.
- (v) Documenting and reporting back to the University within 24 hours any suspected breach.

4. **PAYMENT AND COMPENSATION:**

- a) The Contractor will be paid based on the actual number and type tests taken along with their associated cost.
- b) The Contractor will provide summary monthly invoicing that details the tests taken during any given month.
- c) All invoices shall also include the purchase order number and contract number.
- d) All services provided by the Contractor pursuant to this agreement shall be performed to the satisfaction of the University.
- e) The Contractor shall not receive payment for any work found unsatisfactory by the University.
- f) The Contractor shall be responsible for all costs incurred to complete the job satisfactorily.

5. **FEES & PRICING:**

- a) The following fee schedule shall remain in effect during the entire term of the contract agreement, including any and all associated renewal period options.
- b) Upon mutual agreement by and between the Contractor and the University, stated parties may faithfully negotiate (i) the type/length of exams, (ii) new programs/services related to providing successful online proctoring services, and any associated costs for same.
- c) The negotiations may be conducted at any time during the contract term, and may also be conducted multiple times during any twelve month period, as deemed necessary by either party.

30 Minutes or Less	31 – 60 Minutes	61 – 180 Minutes	181 Minutes or More
\$8.75	\$12.00	\$17.50	\$25.00

6. **TERMS & CONDITIONS:**

The following terms and conditions shall remain in effect for the duration of the contract period, including all renewal periods:

- A. **VENDORS MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia *Purchasing Manual for Institutions of Higher Education and their Vendors* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the University purchasing office and is accessible on the Internet at www.odu.edu/procurement under "Information for Vendors."

- B. APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 23-38.90). The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. ANTI-DISCRIMINATION:** Contractor certifies to the University that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and § 10. of the Rules. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipients religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*the Rules* §36.E.)

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of 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.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ANTITRUST:** By entering into this contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of 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 said contract.

- E. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the University.
- F. **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.
- G. **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.
- H. **CANCELLATION OF CONTRACT:** The University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. Cancellation does not entitle University to a refund of funds received by the Contractor prior to the date of cancellation.
- I. **CHANGES TO THE CONTRACT:**
Changes can 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 order changes 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:
 - a. By mutual agreement between the parties in writing; or
 - b. 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 Contractors' records and/or to determine the correct number of units independently; or
 - c. 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 Institutions of Higher Education and their Vendors*. 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.

- J. **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.
- K. **DRUG-FREE WORKPLACE:** During the performance of this 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 Contractors workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitation 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 vendor.

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

- L. **EXCLUSIVITY:** The University reserves the right to procure goods or services covered under this contract from a third party when, in the University's sole discretion, it is deemed to be in the University's best interest.

- M. INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the University, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the University or to failure of the University to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.
- N. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Contractor certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- O. NOTICES:** Whenever any notice to a party is required hereunder or within the Agreement, such notice shall be in writing, addressed to the party's address set forth below.

If to University regarding invoices:

OLD DOMINION UNIVERSITY
405 Gornto Center
Norfolk, VA 23529
Attn: Ms. Susan Kenter
E-mail: skenter@odu.edu

If to University regarding contract matters and/or issues other than invoices:

OLD DOMINION UNIVERSITY
4401 Powhatan Avenue, Suite 111
Norfolk, Virginia 23529
Attn: Harry R. Smithson, Jr., CPPO
E-Mail: hrrsmiths@odu.edu

If to Contractor:

PROCTORU, INCORPORATED
Birmingham, AL 35244
Attn: Will Kahl, Account Executive
E-Mail: wkahl@proctoru.com

- P. PAYMENT:**
1. Contractor is hereby obligated to:
 - i. Submit all invoices for goods/services ordered, delivered and accepted directly to:
 - a) Old Dominion University
Finance Office
Rollins Hall, Room 202
Norfolk, Virginia 23529; or
 - b) invoice@odu.edu

- ii. All invoices shall include:
 - a) Vendor Name, 'Remit To' Address, Federal Tax Identification Number
 - b) Invoice Number, Invoice Date, Payment Terms and Discounts, and Payment Due Date;
 - c) Purchase Order Number;
 - d) University Contact Number;
 - e) Description of provided goods/services;
 - f) Quantity delivered per line item;
 - g) Unit and Extended Cost per line item; and
 - h) Total Amount Due
- iii. 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.
- iv. All goods or services provided shall be billed by the Contractor at the agreed to contract price.
- v. **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 Subcontractor's:**

- a. The Contractor is hereby 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.
- b. The Contractor is obligated 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.

- c. 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.
- Q. SEVERABILITY:** The provisions of this 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.
- R. TAXES:** Sales to agencies of the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. Old Dominion University's excise tax exemption registration number is 212-057-8029.
- S. 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 and/or scope of services.
- T. 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 ten (10) calendar day's written notice, during which the Contractor may "cure" the cause of the termination. If cured 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 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 has not or is not likely to cure 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. 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.

U. UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES: The following reports shall be submitted as indicated:

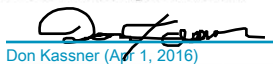
- 1) Periodic Progress Reports/Invoices: The Contractor shall provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority businesses.
- 2) Final Actual Involvement Report: The Contractor shall submit to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value.
- 3) Reporting requirements shall be waived during the initial term and/or renewal periods as long as the Contractor maintains current DSBSD certification status. In the event the Contractor's certification status expires or lapses, the Contractor may be required to provide quarterly SWaM report as required.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

ProctorU, Incorporated

By:


Don Kassner (Apr 1, 2016)

Don Kassner

Title:

Chief Executive Officer

Date:

February 17, 2016

UNIVERSITY:

Old Dominion University

By:


Harry R. Smithson, Jr., CPPO, CUPO, VCCO

Title:

Assistant Director, Procurement Services

Date:

February 17, 2016