

AGREEMENT

Contract #UVA-AGR-2071

This Agreement executed this 12th day of October 2022, by and between the Rector and Visitors of the University of Virginia, (the “University”) and Cielo24, Inc. (“Cielo24”) to meet the requirements of the University and the Virginia Higher Education Procurement Consortium (“VHEPC”) and its members (collectively the “University”).

TERM

The initial term of this Agreement will be for two years effective upon execution of this Agreement, with the ability to renew on the same or similar terms and conditions, for one additional two-year period and three subsequent one-year periods. Cielo24 and the University will mutually agree at least 180 days prior to each renewal option on whether to renew the terms of this Agreement.

WITNESS

By its Request for Proposal RFP-UVA-00063-LP021722 for Captioning and Related Services dated February 17, 2022, the University requested proposals from firms to provide Captioning and Related Services (the “Goods and Services”). In response to the RFP, Cielo24 submitted a written proposal on February 28, 2022, and a letter responding to negotiations dated June 10, 2022. The parties, having negotiated concerning the Goods and Services wish to express in this Agreement the basis on which Cielo24 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 February 17, 2022, including its Attachments 1, 2, 3, 4 & 5.
- B. Agreement Attachment 1, Contractual Provisions.

- C. Cielo24's Proposal submitted on February 28, 2022; and
- D. Cielo24's response to negotiations with the University, consisting of documents dated June 10, 2022, from Joseph De Rocco (Cielo24) to Lori Ponton (University).

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

II. Specific Provisions

Scope of Goods and Services

These specific provisions are restated here for clarification:

Cielo24 will provide services such as audio-visual captioning/transcription, live captioning/CART, and audio description. Services include, but are not limited to:

A. General Requirements

1. Live Captioning (on-site or remote)

A transcriptionist transcribes all that is heard during a live event (i.e., video conferencing, conference calls, classroom lecture and discussion, meetings, presentations, conferences, sports venues, etc.) with text displayed on a computer monitor, on a web page, through a projection system, or other medium or device which can display the text of the audio created in real-time with a high-level of accuracy and minimal latency.

Live captioning will be required for both in-person and remote events. Firms may offer one or both services. Both services will require the services of human transcriptionists.

2. Post-production Captioning

Post-production captions are added to a video after it has been recorded, also known as prerecorded media. Captions are text versions of the verbal and non-verbal audio content, synchronized with video, and include descriptions of all audio components necessary to understand the content and context of the video. It is the expectation the creation and resulting caption files will follow best practices

and guidelines such as those outlined in the [WCAG Standards for Time-Based Media](#) and [The Captioning Key](#).

Although most of the media requiring captions will be video, audio-only files will also be submitted for transcription-only services.

Proposed post-production captioning services may include one or more of the following:

- Closed captioning
- Open captioning
- Transcription only
- Translation

3. **Audio Descriptions**

Audio Description is the verbal depiction of key visual elements in media and live productions and involves the interspersing of these depictions with the program's original audio.

It is the expectation the creation and resulting caption files will follow best practices and guidelines such as those outlined in the [WCAG Standards for Time-Based Media](#) and [The Description Key](#).

Proposed audio description services may include one or more of the following:

- Machine-generated descriptions
- Descriptions provided by human narration
- Combination of the two options above
- Services for live events
- Services for prerecorded media

B. Fees

Cielo24 will provide the following tiered pricing, which is based on usage across all members. To encourage adoption across the VHECP constituency and for additional savings, for the initial Term of the Agreement, Cielo24 will extend pricing from the highest level (\$50,000+ tier) to all University members. At the end of the initial Term, Cielo24 will aggregate usage to determine the appropriate pricing tier for the subsequent

term-year. All Services shall be bound in the execution of a Cielo24 Order Form, an example of which is included.

English SLA and File Duration Limits

Submission Guidelines	Maximum Content Length	Total Number of Daily Hours
12 Hour TAT	1 Hour	10 Hours
24 Hour TAT	3 Hour	50 Hours
48 Hour TAT	No Limit	80 Hours

English Captioning and Transcription Rates – Pay-Go

Turnaround Time	12 Hour	24 Hour	48 Hour	168 Hour
Standard English	\$2.35	\$1.75	\$1.50	NA
Professional English	\$3.75	\$3.15	\$2.25	\$2.00

English Captioning and Transcription Rates – \$1,000 - \$10,000

Turnaround Time	12 Hour	24 Hour	48 Hour	168 Hour
Standard English	\$2.12	\$1.58	\$1.35	NA
Professional English	\$3.38	\$2.84	\$2.03	\$1.80

English Captioning and Transcription Rates – \$10,000 - \$50,000

Turnaround Time	12 Hour	24 Hour	48 Hour	168 Hour
Standard English	\$2.00	\$1.49	\$1.28	NA
Professional English	\$3.19	\$2.68	\$2.91	\$1.80

English Captioning and Transcription Rates – \$50,000+

Turnaround Time	12 Hour	24 Hour	48 Hour	168 Hour
Standard English	\$1.88	\$1.40	\$1.20	NA
Professional English	\$3.00	\$2.52	\$1.80	\$1.60

Additional Post-Production Services (added to per-minute price above)

Type	<\$10,000	\$10,000-\$50,000	\$50,000+
Speaker Identification	\$0.68	\$0.64	\$0.60
Enhanced Audio Tagging	\$0.68	\$0.64	\$0.60
Lyric Transcription	\$0.68	\$0.64	\$0.60

Foreign Language Transcription and Translation Rates

Service	Pay-Go	<\$10,000	\$10,000-\$50,000	\$50,000+
Foreign Language Transcription	\$5.50/min	\$4.95/min	\$4.68/min	\$4.40/min

Translation	\$16.00/min	\$14.40/min	\$13.60/min	\$12.80/min
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Live Event Captioning

Service	Price	Lead Time
Cart	\$160.00/hour	48 hours
Typewell	\$125.00/hour	48 hours

Audio Description

Service	Pay-Go	<\$10,000	\$10,000-\$50,000	\$50,000+
Standard	\$11.00/min	\$9.90/min	\$9.35/min	\$8.80/min
Extended	\$14.00/min	\$12.60/min	\$11.90/min	\$11.20/min

C. Payment Terms and Invoicing

Cielo24 will be paid in accordance to the payment terms selected by Cielo24 upon registration to do business with the University. Cielo24 will submit invoices referencing the correct purchase order number to the appropriate University Accounts Payable Division which will be shown on the purchase order for invoicing. The University's invoices will be sent to:

University of Virginia Accounts Payable
P.O. Box 3025
Scranton, PA 18508
Email: vendor-invoices@virginia.edu

D. Contract Administrators

1. Primary Administration: The individual named below will serve as the point of contact at the University for day-to-day operations under this Agreement. The Primary Administrator cannot approve amendments or price changes to this Agreement. Cielo24 will channel specific service request communications through:

- Lori Kressin
Coordinator of Academic Accessibility
VP for Academic Affairs
University of Virginia
102 Cresap Rd.
P.O. Box 400199
Charlottesville, VA 22901
E: coaa@virginia.edu
Ph: 434-982-5784

- Korey Singleton, Manager
Assistive Technology Initiative
George Mason University
Aquia Building RM 238 MSN: 6A11
4400 University Drive
Fairfax, VA 22030
E: ati@gmu.edu
Ph: 703-993-4743

2. Secondary Administration: Cielo24 will channel all Contract Administration questions not pertaining to a specific service request through the VHEPC and University's Procurement & Supplier Diversity Services department, and specifically the individuals named below:

- **University of Virginia**
Devon Stribling, Senior Sourcing Specialist
Procurement & Supplier Diversity Services
University of Virginia
Carruthers Hall, 1001 N. Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202
Email: dts6c@virginia.edu
Ph: 434-924-1742
- **VHEPC**
Ryan Balber, Director
VHEPC
Carruthers Hall, 1001 N. Emmet Street
Charlottesville, Virginia 22904-4202
Email: rb7pq@virginia.edu
Phone: 434-297-6099; Mobile: 217-649-9700

Cielo24 will not make any commitments or comments, or actions on behalf of the University without the explicit direction of the Contract Administrators. The University reserves the right to change its Contract Administrators, upon notice to Cielo24.

E. Price Escalation

Changes to Price List: The VHEPC will only entertain proposed changes to the price list for review on a *yearly basis (July-June)*, unless it is in the best interest of the VHEPC to

make cost reduction changes that will benefit the VHEPC participating members. Cielo24 is expected to notify the VHEPC of any price decreases to their published price list, and to make price changes to any web based catalog within 30 days. If price decreases are made for services that are on unfilled purchase orders, those items will be sold to the VHEPC members for the lower cost. Promotional Priced services, which are below the VHEPC net price, are included, and the promotional price, if a price advantage to the participating VHEPC members, must also be offered and included in any open, unfilled, purchase orders at the promotional price for the term of the promotion.

Any proposed price increase adjustments will be reviewed yearly, based on the University fiscal year (July-June). The VHEPC reserves the right to audit and review any proposed changes. The VHEPC requires thirty (30) calendar days after receiving a written letter documenting and justifying the reasons for a requested increase; and after receiving any reports requested, showing the total dollar (\$) impact for each participating members (based on the services sold to that particular member from the previous fiscal year). The 30 days for analysis begins after receiving all requested information, in the format requested, and accepted by the VHEPC. Price adjustments will not go into effect until after all the analysis is complete, and recommendation is documented by the VHEPC Contract Administrator, and approved by the Director of the VHEPC. Once approved the price adjustment will be effective the following first of the Month.

Cielo24 should note that price adjustments are not guaranteed and the VHEPC retains the right to verify price movement against various market analytics. Price adjustments will not be granted for any amount over the stated Producer's Price Index (PPI) percent (%) adjustment, except in special and documented instances (i.e. a force majeure event). The PPI is an average of the change in the price of tracked indices. The VHEPC expects that any changes will be below the average, and will not exceed the ceiling, defined as the yearly percent % change in the index tracked. The VHEPC is using the Bureau of Labor Statistics (BLS) data in order to show a fair and equitable adjustment, if it is so warranted, based on hard data and purchase history. PPI data can be accessed through the Bureau of Labor Statistic's web page located at: www.bls.gov/ppi/data.htm

Additionally, the VHEPC will not entertain a price increase based on the cost associated with “the cost of doing business”; which includes, but is not limited to, overhead and transportation costs. There also will be no additional cost increase passed on to the VHEPC by means of surcharges, or other price increases, unless approved by the VHEPC Contract Administrator prior to implementation; and as a result of price analysis of the market conditions.

F. VHEPC Reporting Requirements

Upon written request (to invoices@cielo24.com), Cielo24 will provide quarterly reporting data of all activity for VHEPC members and non-member spend. Reporting data will be sent to the VHEPC Contract Administrator listed in Section D. Part 2.

G. Special Work Performance Requirements

Cielo24 will maintain a mandatory background check and drug and alcohol-testing program for all captioning employees when performing on-site services. A Criminal History Records Check must be completed through the Virginia State Police for each captioning employee. If the check reveals any of the following, Cielo24 will not assign that individual to perform Services for the University:

1. Any felony
2. Any of the following misdemeanor offenses, regardless of when the conviction occurred:
 - Burglary
 - Breaking and entering
 - Robbery
 - Theft
 - Larceny
 - Any sexual offenses
3. Any of the following misdemeanor offenses if convicted within the previous five years:
 - Forgery
 - Fraud
 - Assault and battery
 - Weapons violations
 - Possession, distribution, sale or delivery of a controlled substance

The University reserves the right to review information obtained via Cielo24's mandatory background check and drug and alcohol-testing program upon request for all employees assigned by Cielo24 to University projects/work.

H. Compliance

Cielo24 warrants that the service(s) it will provide to the University is fully compliant with all state and federal laws, regulations, industry codes, and guidance that may be applicable to the service, which may include:

1. Any applicable national, federal, state or local law, rule, directive or regulation relating to the privacy of personal information, including, without limitation, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, and its implementing regulations ("FERPA), the Americans with Disabilities Act, and the Virginia Consumer Data Protection Act

I. Data Protection

Sensitive, non-public "University Data" is strictly regulated by state or federal law. Such data includes but is not limited to: business, administrative and financial data, intellectual property, and patient, student and personnel data. If Cielo24 provides goods or services to the University and will receive, create, or come into non-incident contact with University Data, Cielo24 agrees to abide by the terms and conditions of the [Data Protection Addendum](#). Further, if Cielo24 provides goods or services to the University and will receive, create, or come into non-incident contact with patient or UVa health plan participant Protected Health Information as that term is defined in 45 C.F.R. § 160.103, Cielo24 is a Business Associate, and agrees to abide by the terms and conditions of the [Business Associate Addendum](#) in addition to the Data Protection Addendum.

ACCEPTANCE

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

DocuSigned by:

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Alita Salley, Interim Director
Procurement and Supplier Diversity Services

10/12/2022

Date

For Cielo24, Inc.



Shanna Johnson

CEO

10/7/2022

Date

RFP-UVA-00063-LP021722
Contract #UVA-AGR-2071

Attachment 1
General Contractual Provisions

A. Nondiscrimination

During the performance of this Agreement, Cielo24 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

Cielo24 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. Independent Contractor

Cielo24 is not an employee of the University, but is engaged as an independent contractor. Cielo24 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 Cielo24's performance of this Agreement. Nothing in this Agreement will be construed as authority for Cielo24 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.

D. Drug-Free Workplace

Cielo24, 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, Cielo24 agrees to 1) provide a drug-free workplace for Cielo24'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 Cielo24'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 Cielo24 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 a Cielo24, 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.

E. 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 <https://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

- O Effective, interactive control and use of the Technology will be readily achievable by non-visual means;
- O 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;
- O Non-visual access technology will be integrated into any networks used to share communications among employees, program participants or the public; and
- O 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.

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.

The agreement must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

F. Unauthorized Alien Use

Cielo24 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. Cielo24 furthermore agrees that, during the term of this Agreement, it will not knowingly employ an unauthorized alien.

G. Additional Federal Grant Provisions

The following provisions apply to a contract made under a federal grant: [Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards](#).

H. 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.

I. 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, or other authorized party, and by the individual signing Teknion's proposal or by other individuals named by either party as specified in the Notices provision below. If Cielo24 deviates from the terms of this Agreement without a written amendment, it does so at its own risk.

J. 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:

Procurement and Supplier Diversity Services
Strategic Sourcing Director
University of Virginia
P.O. Box 400202
Charlottesville, Virginia 22904-4202
Phone: 434-924-4019
Fax: 434-982-2690
Contract Reference Number: UVA-AGR-2071

If to Cielo24:

Director of Operations
PO Box 91130
Santa Barbara, CA 93190

Phone: 855-243-5624
Email: finance@cielo24.com

K. University Registration

Cielo24 agrees to register and remain registered as a supplier with the University during the term of this Agreement, and to comply with all applicable terms and conditions associated with registration.

L. eVA Registration / Transaction Fee

The eVA Internet electronic procurement solution is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal is a gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA and all firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution.

Cielo24 is required to register in the eVA Internet e-procurement solution as a condition of award and remain eVA registered during the term of this Agreement. Cielo24 will be subject to an eVA transaction fee, for which Cielo24 will be invoiced by Commonwealth of Virginia, Department of General Services. Cielo24 may not recoup the eVA fee by invoicing the University for the fee. Additional information is available at www.eva.virginia.gov

Cielo24 must ensure that only eVA registered sites are maintained in the University's supplier registration system. If the firm does not meet this requirement throughout the term of the Agreement, Cielo24 may be responsible for all additional eVA expenses incurred by the University as a result of the firm not maintaining proper eVA registration and / or having a non-eVA registered site(s) within the University's supplier registration system.

M. 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.

N. Indemnification

Cielo24 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 Cielo24 or its agents or subcontractors, including the provision of any services or products. Cielo24 warrants that the products, 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 save the University (its employees and agents) from and against any such claim.

O. Termination

If Cielo24 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 15 calendar days or a time agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to Cielo24.

In addition, this Agreement may be terminated by the University for convenience by providing 30 days' notice. The University remains responsible for payment of all products and services it has implemented, used or purchased through the time of termination.

P. Non-Appropriation

Funding for any Agreement between the University and Cielo24 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.

Q. Right of Audit

The University reserves the right to audit or cause to be audited Cielo24's books and accounts regarding the University's account at any time during the term of this Agreement and for three years thereafter. Cielo24 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 Cielo24 to perform self-audits within reasonable parameters established by the University.

R. Contractual Claims Procedure

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:

1. Cielo24 must provide the written claim to:
Procurement and Supplier Diversity Services
Strategic Sourcing Director
University of Virginia
Carruthers Hall
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202
2. Although Cielo24 may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section 1 above, Cielo24 must submit any unresolved claim in writing no later than 60 days after final payment to the Strategic Sourcing Director if it wishes to pursue its claim.
3. Upon receiving the written claim, the Strategic Sourcing Director will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Cielo24. If such discussion is to be held, the Strategic Sourcing Director will contact Cielo24 and arrange such discussion. The manner of conducting such discussion will be as the Strategic Sourcing Director

and Cielo24 mutually agree.

4. The Strategic Sourcing Director will mail his or her decision to Cielo24 within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.
5. Cielo24 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

Provide a written statement explaining the basis of the appeal within 15 days after Cielo24's receipt of the decision.

6. 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 Cielo24. If such discussion is to be held, the Director of Procurement and Supplier Diversity Services will contact Cielo24 and arrange such discussion. The manner of conducting such discussion will be as the Director of Procurement and Supplier Diversity Services and Cielo24 mutually agree.
7. The Director of Procurement and Supplier Diversity Services will mail his or her decision to Cielo24 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.

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 Agreement. Cielo24 may not, however, file such claim unless and until it has complied fully with the procedure set forth in this provision.

S. Cooperative Procurement / Use of Agreement by Third Parties

It is the intent of this Agreement to allow for cooperative procurement. Accordingly, any

public body, public or private health or educational institution, or any University related foundation may access this Agreement if authorized by Cielo24.

Participation in this cooperative procurement is strictly voluntary. If authorized by Cielo24, this Agreement may be extended to the entities indicated above to purchase at fees in accordance with this Agreement. Cielo24 will notify the University in writing of any such entities accessing this Agreement. No modification of this Agreement or execution of a separate agreement is required to participate. Cielo24 will provide semi-annual usage reports for all entities accessing this Agreement. Participating entities will place their own orders directly with Cielo24 and will fully and independently administer their use of this Agreement to include contractual disputes, invoicing and payments without direct administration from the University. 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 Cielo24 to extend this 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 this Agreement no matter the circumstances.

Use of this Agreement does not preclude any participating entity from using other agreements or competitive processes as the need may be.

T. 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 Cielo24 by the University's Director of Procurement and Supplier Diversity Services.

U. Purchasing Manual

This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" and any subsequent revisions, which is available at this web site: <https://vascupp.org/>

V. Goods and/or Services

During the term of this Agreement, Cielo24 will provide for the University the goods

and/or services offered to the University by the firm 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 the firm.

W. Future Goods and/or Services

The University reserves the right to have Cielo24 provide additional goods and/or services that may be required by the University during the Term of this Agreement. Any such goods and/or services will be provided under the same terms and conditions of this Agreement. Such additional goods and services may include other products, components, accessories, subsystems or services provided by Cielo24. These additional goods and services will be provided to the University at Favored Customer pricing.

X. Favored Customer

Cielo24 represents that the prices, terms, warranties, and benefits specified in its proposal are comparable to or better than the equivalent terms being offered by the firm to any present customer.

Y. Ordering Procedures

The University does not place verbal orders for Goods and/or Services. The University may only place orders for the Goods and/or Services by issuing a formal written Purchase Order in advance of Cielo24's provision of any Goods and/or Services. Accordingly, at the University's request, Cielo24 will issue a proposal/quotation listing the Goods and/or 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 Cielo24 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 Cielo24 to provide the Goods and/or Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If Cielo24 provides Goods and/or 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.

Z. Fair Employment Contracting Act

In accordance with Code of Virginia Section 2.2-4201, during the performance of this Agreement, Cielo24 agrees as follows:

1. Cielo24 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 Cielo24. Cielo24 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. Cielo24 will, in all solicitations or advertisements for employees placed by or on behalf of Cielo24, state that Cielo24 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 provision.
3. If Cielo24 employs more than five employees, Cielo24 shall (i) provide annual training on Cielo24's sexual harassment policy to all supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post Cielo24's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth of Virginia that Cielo24 owns or leases for business purposes and (b) Cielo24's employee handbook.

Cielo24 shall include the provisions of subparagraphs 1, 2, and 3 above in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

AA. Marketing

The University encourages Cielo24 to appropriately and specifically market itself to applicable end-using University departments that may be interested in Cielo24's Goods

and/or Services. However, Cielo24 will not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that Cielo24 engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement immediately.

BB. Compliance

Cielo24 will comply with all applicable laws and industry standards in performing services under this Agreement. Any Cielo24 personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities.

CC. 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 Cielo24 (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. Cielo24 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 this Agreement and will have full ownership and beneficial use thereof free and clear of claims of any nature by any third party including without limitation copyright or patent infringement claims. Cielo24 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.

DD. Brand Standards

Cielo24 warrants that any Creative Work produced for the University (1) will comply with the University's brand standards and (2) in its end application, will fit the visual look and feel of the overall brand aesthetic, brand concept, color palette, visual effects, photographic and video style standards, and make correct use of all marks including

logos and identity components. Cielo24 agrees that the University, in its sole discretion, will determine Cielo24's compliance with this Provision. Creative Work includes, but is not limited to: websites, applications, electronic communications, newsletters, advertisements, mailings, magazines, and other communication materials (digital and print) produced for the University by Cielo24. For additional guidance, Cielo24 should consult the UVA Brand Guidelines at <http://brand.virginia.edu> or contact University Communications (brandguidelines@virginia.edu).

EE. International Traffic in Arms Regulations (ITAR)

If Cielo24 is providing any items, data or services under this order that are controlled by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR), it must notify (by sending an email to export-controls@virginia.edu), and receive prior written authorization from, the University's Office of Export Controls before delivery. The notification provided by the supplier shall include the name of the University of Virginia point of contact, identify each ITAR controlled commodity, provide the associated U.S. Munitions List (USML) category number(s), and indicate whether or not the determination was reached as a result of a commodity jurisdiction or self-classification process. Cielo24 agrees that if it fails to notify the University that it is providing ITAR-controlled items, data or services, it shall reimburse the University for any fines, legal costs and other fees imposed by the above-named regulatory agency for any violation of export controls regarding the provided items, data or services

FF. License Requirements

Certain statutes and regulatory agencies require that some firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. It is Cielo24's responsibility to comply with the rules and regulations issued by the appropriate regulatory agencies and possess and maintain the appropriate licenses if applicable for the Goods and/or Services to be provided under this Agreement. A copy of any such applicable license and/or permit must be furnished upon request to the University or VASCUPP member institution. For example, if Cielo24 will be providing 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.

GG. 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, 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.

HH. Promotional Activity

During the Term of the Agreement, Cielo24 may reference the University as a customer in sales and marketing materials and public statements (Promotional Materials), provided such Promotional Materials do not include opinions explicitly or implicitly attributed to the University about the quality of the goods and/or services provided to the University. In no event shall Cielo24 request that the University or any University employee endorse Cielo24 or Cielo24's goods and/or services. Promotional Materials may include the name "University of Virginia" and UVA's approved institutional logo solely to identify accurately the University as an entity to whom Cielo24 provides goods and/or services. Furthermore, the University grants Cielo24 a limited, nonexclusive license to display the University's Marks solely as they are made available to Cielo24 in connection with Cielo24's goods and/or services

II. Insurance

Cielo24 shall procure and maintain and require any Subcontractor to procure and maintain for the duration of the contract, insurance against claims which may arise from or in connection with the performance of the work and the results of that work by Cielo24, its agents, representatives, employees or subcontractor. Beginning on the

Commencement Date and continuing during the Initial Term of the Contract and any Renewals or extensions thereof, Cielo24, at Cielo24's expense, shall keep in force, with an insurance company with a current A.M. Best's rating of no less than A:VII, one which is authorized to transact business in Virginia, and in a form acceptable to UVA the following:

Commercial General Liability (CGL): providing CGL coverage on an "occurrence" basis, including for

- bodily injury liability including: death, assault or battery,
- property damage liability for damage to property of third parties,
- personal injury liability,
- contractual liability,
- products / completed operations liability and with limits no less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) aggregate.

Automobile Liability: providing coverage on all vehicles (i.e., owned, non-owned, and hired) operated with combined minimum limits of liability of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage.

Workers' Compensation: providing coverage of at least the statutory amounts covering all employees, and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) for each coverage part.

Employment Practices Insurance: providing coverage against claims made by any employee, former employee, or potential employee or third party who alleges discrimination (e.g., age, sex, race, or disability), wrongful termination of employment, harassment or any other employment practices-related injuries with limits of liability of at least One Million Dollars (\$1,000,000).

Cyber Insurance: providing coverage against information security and privacy breaches (including social engineering coverage, legal and forensic services, credit monitoring programs, website media content liability, crisis management and public

relations and violations of Payment Card Industry compliance with combined limits of liability of at least One Million Dollars (\$1,000,000).

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Commonwealth of Virginia, and the Rector and Visitors of the University of Virginia, its officers, employees, and agents are to be covered on the CGL policy with respect to liability arising out of work or operations performed including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage

For any claims related to this contract, Cielo24's insurance coverage shall be primary insurance as respects the Commonwealth of Virginia, the Rector and Board of Visitors of the University of Virginia, its officers, employees, and agents. Any insurance or self-insurance maintained by the Commonwealth of Virginia, the Rector and Board of Visitors of the University of Virginia, its officers, employees, and agents shall be excess of Cielo24's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to UVA.

Waiver of Subrogation

Cielo24 will grant to UVA a waiver of any right to subrogation which any insurer of Cielo24 may acquire against UVA by virtue of the payment of any loss under such insurance. Cielo24 will agree to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not UVA has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by UVA.

UVA may require Cielo24 to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims- made policy form with a Retroactive Date prior to*** the contract effective date, Cielo24 must purchase “extended reporting” coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Cielo24 shall furnish UVA with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by UVA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Cielo24’s obligation to provide them. UVA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

UVA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

JJ. Virginia’s Freedom of Information Act (FOIA)

This Agreement is governed by and subject to the Commonwealth of Virginia’s Freedom of Information Act (FOIA). All pricing information, consistent with the public interest and the underlying policy of the Commonwealth of Virginia, is open to the inspection of

any qualified requestor and cannot be designated as confidential, proprietary or trade secret to avoid disclosure. Pricing information is also shared on a need-to-know basis both within the University and its affiliates and consultants for purposes of operational review, transaction management, contract compliance & monitoring, benchmarking and performance improvement. Attempts to prevent disclosure of pricing information by designating it as confidential, proprietary or trade secret will be ignored. In addition, any non-price information considered by a firm to be proprietary or to constitute trade secret(s) is also subject to disclosure under FOIA, except that information provided by Cielo24 that constitutes proprietary information or trade secret(s), other than pricing information, may be exempted from disclosure if Cielo24 invokes the protections of Virginia Code Section 2.2-4342(F) in writing and follows its stated requirements prior to or upon submission of the information for which Cielo24 is seeking protection.

KK. Governing Law

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

LL. Entire Agreement

This is the entire agreement between the University (including University employees and other End Users) and Cielo24. In the event that Cielo24 enters into terms of use agreements or other agreements or understanding, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply.

MM. Agreement Signature

This Agreement may be executed in counterparts, each of which will be deemed an original, and both of which taken together will constitute one and the same document. Electronically transmitted signatures will be deemed originals for all purposes relating to the agreement.