Purchasing Department
4400 University Drive, MS 3C1, Fairfax, VA 22030
Phone: 703.993.2580; http://fiscal.gmu.edu/purchasing/

ADDITIONAL USER CONTRACT
GMU-ER0915-26

In accordance with §6 of the *Governing Rules* it is the intent of George Mason University to access the contract listed below incorporating the Scope of Work as mutually agreed by both parties.

DATE: September 22, 2026

CONTRACT TITLE: Out of State Recruitment Services

CONTRACT ORIGIN: Virginia Commonwealth University (VCU)

RFP/IFB/CONTRACT NO: VCU-SVS-7305

CONTRACTOR: **Capture, LLC dba Capture Higher Ed**
2303 River Road, Suite 201,
Louisville, KY 40206

CONTRACT PERIOD: September 8, 2026 to September 30, 2028 with two (2) successive one-year renewal options.

SCOPE OF WORK: Contractor shall provide Higher Education Recruitment Marketing Services for the Integrated Enrollment Marketing department of George Mason University in accordance with this Additional User Contract and VCU contract VCU-SVS-7305. George Mason University (herein after referred to as "George Mason," or "University") is a public institution of higher education and agency of the Commonwealth of Virginia.

During the term of this Contract, Contractor may issue Statements of Work ("SOW") to modify the scope of the engagement or otherwise change the work to be performed under this Contract. All SOW's must be on a form approved by George Mason prior to the start of this Contract. Any SOW that does not conform to the pre-approved SOW form shall be void even if approved by George Mason. Additionally, the SOW shall be limited to modifications to the scope of the engagement or other changes to the work to be performed under this Contract; any other terms contained in a SOW shall be void and have no effect even if approved by George Mason. Other than changes to the scope of the engagement or the work to be performed under this Contract, Contractor may not change, modify, add, supersede, or remove any term from this Contract through a SOW.

George Mason may, upon written notice, terminate any individual Statement of Work ("SOW") issued under this Contract for convenience, without terminating the Contract as a whole. Termination of a SOW shall be effective immediately after receipt of written notice. Upon termination of a SOW, George Mason shall be liable only for payment of services actually performed and accepted up to the effective date of termination, reimbursable expenses incurred prior to the effective date of termination (if applicable and in accordance with the SOW), and any non-cancellable commitments expressly authorized in the SOW. Termination of an SOW shall not affect the validity or enforceability of the Contract or any other SOWs then in effect.

CONTRACT ADMINISTRATOR: Caitlin Shear, Senior Director, Integrated Enrollment Marketing, Division of Enrollment Management, cshear@gmu.edu.

PRICING & PAYMENT SCHEDULE:

See attached Contractor proposal dated 9/17/2026 for detailed pricing.

Pricing for future contract years will be provided in accordance with the VCU Cooperative Purchasing price schedule. Integrated Enrollment Marketing will issue a Purchase Order to renew services.

Net 30 Payment Terms. Contractor shall submit invoices directly to acctpay@gmu.edu. Invoices must reference a George Mason Purchase Order number. All payments will be made Net 30 and invoices will be submitted in accordance with the following Payment Schedule:

12/1/2026	$ 244,625
5/1/2027	$ 244,625

CONTRACT DOCUMENTS IN ORDER OF PRECEDENCE:

A. This signed Additional User Contract GMU-ER0915-26;
B. Capture Proposal Dated 9/17/2026 (attached);
C. VCU Master Agreement VCU-SVS-7305, including all Agreement Documents (attached).

ADDITIONAL TERMS AND CONDITIONS:

A. APPLICABLE LAW AND CHOICE OF FORUM: This Contract shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia. All disputes arising under this Contract shall be brought before an appropriate court in the Commonwealth of Virginia.

B. CLAIMS: Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the Contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

1. The Contractor must submit written claim to:
Chief Procurement Officer
George Mason University
Purch1@gmu.edu

2. The Contractor must submit any unresolved claim in writing no later than 60 days after final payment to the Chief Procurement Officer.

3. Upon receiving the written claim, the Chief Procurement Officer will review the written materials relating to the claim and will mail their decision to the Contractor within 60 days after receipt of the claim.

4. The Contractor may appeal the Chief Procurement Officer's decision in accordance with § 55 of the *Governing Rules.*

C. CONFLICT OF INTEREST: Contractor must immediately disclose to George Mason's Office of Institutional Compliance & Ethics (ethics@gmu.edu) any actual, potential, or perceived conflict of interest involving any of its officers, directors, owners, or partners. Contractor represents and warrants to George Mason that neither its execution of this Contract nor its performance under this Contract, whether by Contractor, its agents, officers, or employees, does or will involve, contribute to, or create a conflict of interest under Article 6 of the Virginia Public Procurement Act (Va. Code §§ 2.2-4367 through 2.2-4377, § 57 of the Governing Rules), the Virginia State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Va. Code § 18.2 – 498.1 et seq.), or any other applicable law or regulation

D. DEBT SET-OFF ACKNOWLEDGMENT AND CREDIT OBLIGATION: The Contractor expressly acknowledges that payments issued by George Mason may be intercepted, in whole or in part, pursuant to Virginia Code § 58.1-520 et seq., as amended, through the Commonwealth of Virginia's Comptroller's Debt Setoff Program and any other similar applicable state or federal offset program. The Contractor agrees that any such interception shall constitute payment in full of the affected invoice or payment obligation in accordance with Virginia Code Annotated § 2.2-4350. The Contractor shall not delay, suspend, withhold, or condition the crediting of George Mason's account, performance under this Contract, or delivery of goods or services due to any such interception, offset, or seizure, and shall not seek duplicate payment from George Mason for amounts so intercepted.

E. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless George Mason University, the Commonwealth of Virginia, 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 George Mason or to the failure of George Mason to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered. Contractor understands and acknowledges that George Mason has not agreed to provide any indemnification or save harmless agreements running to Contractor.

F. INFORMATION TECHNOLOGY ACCESS ACT: Computer and network security is of paramount concern at George Mason. George Mason wants to ensure that computer/network hardware and software does not compromise the security of its IT environment. Contractor agrees to use commercially reasonable measures in connection with any offering your company makes to avoid any known threat to the security of the IT environment at George Mason.

All e-learning and information technology developed, purchased, upgraded or renewed by or for the use of George Mason shall comply with all applicable University policies, Federal and State laws and regulations including but not limited to Section 508 of the Rehabilitation Act (29 U.S.C. 794d), the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia, as amended, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by or on behalf of the University. The Contractor shall also comply with the Web Content Accessibility Guidelines (WCAG) 2.1 AA. For more information, please visit http://ati.gmu.edu, under Policies and Procedures.

G. NON-EXCLUSIVITY: Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Contractor. This Contract will not restrict or prohibit George Mason from acquiring the same or similar goods and/or services from other entities or sources.

H. NON-SOLICITATION / NON-COMPETE: George Mason University, as a state agency of the Commonwealth of Virginia, shall not be subject to or bound by any non-solicitation or non-compete provisions. All University positions are publicly posted, and contractor employees may freely apply for, be considered for, and accept employment with the University without restriction. Any provision to the contrary shall be deemed null, void, and unenforceable.

I. PAYMENT TO SUBCONTRACTORS: Contractor shall take the following actions upon receiving payment from George Mason: (1) pay the subcontractor within seven days for the proportionate share of the total payment received from George Mason attributable to the work performed by the subcontractor under that Contract; or (2) notify George Mason and subcontractor within seven days, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for non-payment. The Contractor shall collect the appropriate Tax Identification Number (Either SSN# or EIN#) based on the entity type of the subcontractor. The Contractor shall pay interest to subcontractors on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from George Mason for work performed by the subcontractor under that contract, except for amounts withheld as allowed by prior notification. Unless otherwise provided under the terms of this Contract, interest shall accrue to subcontractors at the rate of one percent per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of George Mason. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

J. PUBLICATION OF CONTRACT DOCUMENTS: It is a statutory requirement for George Mason to utilize eVA (electronic Virginia), the Commonwealth of Virginia's agency-wide procurement online system. This Contract and related documents, including but not limited to purchase orders, invoices, proposals, scopes of work and pricing data are subject to publication and shall not be treated as confidential or require notification to any party prior to disclosure.

K. SOVEREIGN IMMUNITY: Nothing in this Contract shall be deemed a waiver of the sovereign immunity of the Commonwealth of Virginia and of George Mason.

{SIGNATURE PAGE TO FOLLOW}

IN WITNESS WHEREOF, this Contract has been executed by an authorized representative of each party as of the date set forth beneath such party's designated representative's signature.

Capture, LLC dba Capture Higher Ed	**George Mason University**
Signed by: Jim Lintner EAEE91678A3D45C...	DocuSigned by: Clifford Shore E1DA89EA373640A...
Signature	Signature
Name: Jim Lintner	Name: Clifford Shore
Title: CFO	Title: Chief Procurement Officer
Date: 9/22/2026	Date: 9/23/2026

Proposal

Higher Education Recruitment Marketing Services

PREPARED FOR:

George Mason University
VCU-SVS-7305

Caitlin Shear
Director of Integrated Marketing

cshear@gmu.edu

Proposal Issued:
9/17/2026

Proposal Valid Until:
Date 10/31/2026

Capture Higher Ed
2303 River Road, Suite 201
Louisville, KY 40206

www.capturehighered.com
(502) 585-9033

Company Representative:
Geoff Broome
Enrollment Solutions Consultant

gbroome@capturehighered.com
(610) 563-1358

Pricing & Payment Schedule

VCU-SVS-7305
Dates of Service 8/31/2026 – 8/31/2027

	UNIT PRICE	DISCOUNT	YEAR I
Platform			
Behavioral Intelligence Platform Engage: Behavioral Data and Dynamic Content Campaigns to Include: • 3 Behavioral Email Series • 35 Ad Hoc Emails Software Platform: • Stealth Identification • CRM Integration • Dynamic Content & Marketing Automation • Analytics & Reporting • Apply Model • Enroll Model	$56,440		$56,440
Engage: Additional License - Graduate	$16,538		$16,538

	UNIT PRICE	DISCOUNT	YEAR I
Digital Recruitment Solutions			
Undergraduate Solutions for Seniors, Juniors, and Sophomores: 12 Month Inquiry and Application Generation 12-Month Digital Marketing Solutions for Brand Awareness, Inquiry Generation, Application Generation, and Yield may Include: • Google Search • Google Display • Retargeting • Social Display (Meta, TikTok, Snapchat Etc.) • HHIP Targeting	$401,272		$401,272
META / Social Display Spend	$15,000		$15,000
Total Capture Investment and Direct Spend	$489,250		$489,250

capture
Capture Higher Ed • 2303 River Road, Suite 201, Louisville, KY 40206
(502) 585-9033 • capturehighered.com

Payment Schedule:
12/1/2026 - $244,625
5/1/2027 - $244,625

Capture Higher Ed • 2303 River Road, Suite 201, Louisville, KY 40206
(502) 585-9033 • capturehighered.com

MASTER AGREEMENT

#: VCU-SVS-7305

This Master Agreement ("Agreement"), effective as of the last date executed ("Effective Date"), is between Virginia Commonwealth University, a corporation and an institution of higher education of the Commonwealth of Virginia, whose address is 912 West Grace Street, Richmond, VA 23298 ("VCU", or "University"), and Capture, LLC dba Capture Higher Ed, a Kentucky corporation, with offices located at 2303 River Road, Suite 201, Louisville, KY 40206, ("Capture, LLC" or "Firm"). VCU and Firm are sometimes referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, VCU issued a Request for Proposals to solicit proposals for Out of State Recruitment Services (the "Services"), RFP# 212167790CK issued March 5, 2026 (the RFP); and

WHEREAS, Firm submitted its proposal dated April 2, 2026, (the "Proposal") wherein it wished to be considered, among other things, for the Services as more fully specified therein; and

WHEREAS, VCU considered all proposals submitted, including the Firm's Proposal, and VCU now desires to award to Firm, understanding that the final execution date shall be deemed the Award Date; and

WHEREAS, Firm desires to perform the Services as set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. **AGREEMENT DOCUMENTS:** The following documents are integrated into and made part of this Agreement:

A. ATTACHMENT A: General Contractual Provisions

B. ATTACHMENT B: Specific Contractual Provisions

C. ATTACHMENT C: Data Protection Addendum

D. ATTACHMENT D: PRICING

E. ATTACHMENT E: Publicly Accessible Agreement (PAC)

F. RFP# 212167790CK issued March 5, 2026, in its entirety, by reference;

G. Firm's RFP Proposal, dated April 2, 2026, by reference

Should a conflict arise among the foregoing documents, this Agreement, to include the Contractual Provisions, shall control.

B. **TERM and RENEWAL OF CONTRACT:** This contract shall have a two (2) year initial term (the "Initial Term") and may be renewed by VCU upon mutual written agreement of authorized representatives of both Parties for two (2) successive one (1)-year periods (the "Renewal Term") under the terms and conditions of this original Contract or as otherwise agreed in writing by the Parties at such time.

C. **SERVICES/GOODS:** Firm shall provide the following Services:

1. Increase out-of-state freshman recruitment and enrollment: Implement a multi-channel outreach strategy—including phone calls, direct mail campaigns, and video content—to drive up freshman application and enrollment numbers.

2. Expand Transfer Student Pipeline: Develop targeted strategies to attract and increase the influx of transfer students from both two-year community colleges and four-year institutions.

D. FIRM RESPONSIBILITIES:

1. Firm shall implement a full-funnel, multi-channel campaign framework designed to drive brand awareness, nurture prospects, and drive conversions across out-of-state (OOS) freshman, transfer, and traditional undergraduate student populations.
2. Firm shall expand search strategies utilizing its proprietary SearchR predictive model to weight initial name purchases toward high-opportunity OOS markets and distinct transfer populations.
3. Firm shall launch dynamic personalized email campaigns and landing pages that adapt content in real time based on a student's web behavior and expressed interests.
4. Firm shall execute hyper-targeted digital advertising campaigns across multiple channels—including Paid Social, Google PPC, Video/YouTube, Programmatic Display, and Household IP Targeting—to build OOS brand presence and capture transfer intent.
5. Firm shall print, design, produce, and mail 50,000 personalized direct mail pieces annually, strategically deploying them to top-ranked prospects from the APPLY model.
6. Firm shall deploy its Enrollment Marketing Platform to provide real-time behavioral tracking, progressive identification (PID) forms, stealth visitor identification, and automated affinity prospect tagging.
7. Firm shall provide continuous 12-month Behavioral Email Series (BES) communication flows—structured into Welcome, Connect, and Release phases—alongside a designated volume of ad-hoc emails tailored to freshman and transfer cohorts.
8. Firm shall maintain four integrated predictive models (SearchR, APPLY, ENROLL, and TRAVELR) to continuously rank prospect likelihood to apply/enroll, reveal yield risks, and prioritize counselor outreach.
9. Firm shall establish a standard, bidirectional data integration with VCU's Slate CRM to ensure daily updates and a clean, consistent data sync between systems.
10. Firm shall deliver a comprehensive suite of reporting analytics, including daily platform tracking, bi-weekly strategy calls, monthly performance reports, quarterly evaluations, and an annual ROI analysis.
11. Other
    a) Twice-monthly meetings with VCU to address any service issues, provide ongoing strategy planning, campaign execution insights and results, ROI and other service issues.

E. **FEES:** VCU shall pay Firm a fee up to $833,046 for the initial term of the contract, as outlined in Attachment D: Pricing. Fees for cooperative purchases are included in Attachment D: Pricing.

F. **ACCEPTANCE OF VCU PURCHASE ORDERS:** The Firm will provide a detailed statement of work prior to any project summarizing specific services, deliverables, delivery dates, and cost. The Firm will do so without introducing additional terms or conditions and will not require VCU to sign any separate agreements.

G. PAYMENT METHOD AND PAYMENT TERMS:

A. VCU shall pay Firm within the net days specified below following receipt of a proper invoice, services rendered, or goods delivered, whichever is later pursuant to and in accordance with §§ 42-45 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth* (similar to the Virginia Prompt Payment Act).

B. All payments will be made based on the net terms agreed upon in this Agreement, starting from after receipt of invoice or delivery, whichever occurs last. This shall not affect offers for early payment discounts, however.

C. Fees appearing to be incorrect will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached.

D. Specific Terms:

1. Payment Method: ACH-Paymode-X Basic

2. Payment Terms: Net 35

E. Firm acknowledges and agrees that the payment method agreed to under this Agreement shall apply to all invoices and payments related to this Agreement and any other current or future agreements, purchase orders, or transactions involving the same Firm, regardless of remit-to address or locations.

If VCU and Firm execute multiple agreements with different payment methods specified, VCU may, in its sole discretion, select and apply one preferred payment method across all such agreements and associated transactions for consistency and administrative efficiency. VCU may update the payment method in the Firm's vendor file without further notice.

Any Firm-requested changes must be submitted in writing and are subject to approval by the Office of Procurement Services. Firm may, at any time, upgrade to either the Virtual Card or Premium ACH (Paymode-X) payment method by coordinating with Bank of America or Paymode-X. These upgrades do not require an amendment to the Agreement but VCU reserves the right to reject or deny a change deemed not in the best interest of the University.

H. **INVOICING:** All invoices will reflect the VCU Purchase Order number and will be emailed to VCU.Invoices@trustflowds.com or mailed to Accounts Payable, Box 3985, Scranton, PA 18505. For additional information regarding proper invoicing practices follow the link below:

https://procurement.vcu.edu/for-suppliers/vendor-invoicing--payment/

Firm shall comply with all University invoicing requirements, including submission through VCU's designated intake channels and accurate referencing of applicable Purchase Orders. VCU reserves the right to reject or return any improper invoice, including but not limited to duplicate invoices, without penalty. In the event Firm repeatedly submits improper invoices, VCU may impose administrative fees and costs, and may deduct such fees and costs from future Firm payments.

I. **CONTRACTS ADMINISTRATOR:** The Firm will not make any commitments/comments or take actions on behalf of the University without the explicit direction of the Contract Administrator.

1. Primary Administrator:

The Primary Administrator is the point of contact for day-to-day operations under this Agreement.

The Firm and the Primary Administrator acknowledge that no binding changes or amendments to this Agreement can be made without approval of the Office of Procurement Services. The Primary Administrator is:

Vishon Luck
Assistant Vice President of Strategic Enrollment and Admissions
Office of Admissions
Division of Strategic Enrollment Management and Student Success

901 West Franklin Street, Third Floor
Richmond, Virginia 23284-3065
(804) 827-0422
mvluck@vcu.edu

2. Secondary Administrator:

Firm will channel all contract questions not pertaining to a specific service or department request through VCU's Procurement Office and the individual named below:

Christopher Kersey
Category Manager
Procurement Services
912 W. Grace Street, 5th Floor
Richmond, VA 23284
(804) 828-0163
ckersey2@vcu.edu

Any updates to the information in this section may be provided to the Firm in writing. A formal amendment to this Agreement is not required to do so.

J. **NOTICES:** Notices, requests, claims, legal notices, and other communications not related to the day-to-day operations, but required or permitted under this Agreement, shall be in writing, shall refer specifically to this Agreement, and shall be deemed delivered upon receipt. Any such notices, requests, and other communications shall be addressed as follows:

FOR VCU:

Executive Director
Office of Procurement Services
912 West Grace Street, 5th Floor
Richmond, Virginia 23298-0327
(804) 828-1077
contracts@vcu.edu

FOR FIRM:

Geoff Broome, Account Manager
Capture, LLC dba Higher Ed
2303 River Road, Suite 201
Louisville, KY 40206
gbroome@capturehighered.com

Any notice sent by any other means shall not be considered duly given or delivered unless the receiving party affirmatively acknowledges receipt.

K. **SMALL BUSINESS AND SUPPLIER DIVERSITY (SBSD) CERTIFIED BUSINESSES REPORTING:** The Firm will identify and fairly consider SBSD Firms for subcontracting opportunities when qualified SBSD firms are available to perform a given task required under this Agreement. Firm will submit a quarterly SBSD business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January.

Firm will submit the quarterly SBSD business reports, based upon the Firm's proposed commitment to:

VCU SBSD Reporting
swamreporting@vcu.edu

The quarterly SBSD business reports will contain the following information:

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

Firm's failure to provide SBSD reports on a quarterly basis which contain the information required by this section and/or Firm's failure to comply with the plan for utilizing SBSD businesses submitted by Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to Section 9(G)(4) of the *Purchasing Manual.*

IN WITNESS WHEREOF, the Parties agree that this Agreement contains the entire understanding between the Parties and may only be modified upon mutual agreement and executed in writing by authorized representatives of each Party. By signing below, the signatories affirm that they are the authorized representatives of their respective party and have been delegated authority to bind their respective parties in contract.

VIRGINIA COMMONWEALTH UNIVERSITY	**CAPTURE, LLC DBA CAPTURE HIGHER ED**
By: Signed by: John McHugh EE6DA7427C67468...	By: [signature]
Name: John McHugh	Name: Jim Lintner
Title: Executive Director, Procurement Services	Title: CFO
Date: 9/8/2026	Date: 09/02/26

ATTACHMENT A
VIRGINIA COMMONWEALTH UNIVERSITY
GENERAL CONTRACTUAL PROVISIONS

A. **COMPLIANCE**. Firm[1] will comply with all applicable laws, regulations, industry codes, and guidance in performing services under this Agreement.

B. **CONFLICT OF INTERESTS**. The Firm represents and affirms 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 (§ 2.2-3100 *et seq* of the *Code of Virginia* (*Virginia Code*), the Virginia Ethics In Public Contracting Act (*Virginia Code* § 2.2-4367 *et seq*), the Virginia Governmental Frauds Act (*Virginia Code* § 18.2-498.1 *et seq*) or any other applicable law or regulation. Should circumstances change, the Firm will notify the University of any potential conflict of interests prohibited under law.

C. **INDEPENDENT CONTRACTOR**: Firm is not an employee of the University, but is engaged as an independent contractor. The Firm will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to the Firm's performance of this Agreement. Nothing in this Agreement will be construed as authority for the Firm 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. **WAIVER OF CLAIMS**: No waiver of any right will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right will prevent a later exercise of such or any other right.

Notwithstanding anything contained herein to the contrary, VCU is an agency of the Commonwealth of Virginia and as such, pursuant to *Virginia Code* § 2.2-514, cannot waive or settle legal claims that VCU may have against another party nor may VCU bestow any right or obligation that is beyond the duly granted authority of the signatory to bestow or incur on behalf of the Commonwealth of Virginia.

E. **NONDISCRIMINATION/ANTI-DISCRIMINATION**: During the performance of this Agreement, Firm will comply with the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975 (VFECA), as amended, the Virginians With Disabilities Act (VDA), the Americans With Disabilities Act (ADA) and § 9 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth* (*Governing 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 recipient's 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. (*Governing Rules* § 36)

In every contract over $10,000, the provisions below apply.

1. During the performance of this Agreement, the Firm agrees as follows:

   a) The Firm will not discriminate against any employee or applicant for employment because of race, religion, color, gender, gender identity, national origin, age, disability or other basis prohibited by state law relating to discrimination, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Firm. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this

[1] The term "Firm" shall have the same meaning and be interchangeable with the terms "Vendor", "Supplier" and/or "Firm" as such terms may be used/referenced in this Agreement or any underlying agreement documents.

nondiscrimination clause.

b) The Firm, in all solicitations or advertisements for employees placed by or on behalf of the Firm, will state that such Firm 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 these requirements.

d) If Firm employs more than five employees, Firm shall (i) provide annual training on Firm'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 Firm's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth of Virginia that Firm owns or leases for business purposes and (b) Firm's employee handbook.

2. The Firm will include the provisions of a through d above in every subcontract or purchase order over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

F. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: Firm warrants and certifies that it does not and will not during the performance of this contract employ unauthorized alien workers, as defined by the federal Immigration Reform and Control Act of 1986 or violate any other provisions of the Act.

G. **ANTITRUST:** By entering into a contract, Firm conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under this Agreement.

H. **NON-APPROPRIATION**: Funding for any Agreement between the University and a Firm 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 the Agreement may be terminated by the University effective the last day for which appropriated funding is available.

I. **VIRGINIA MINIMUM WAGE ACT**: All Firms must comply with the state and federal minimum wage requirements. Every Firm shall pay to each of their employee's wages at a rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum wage as prescribed by Virginia Minimum Wage Act (Virginia Code § 40.1-28.8 et seq.) and the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.), respectively. For details on minimum wage law requirements, contact the Department of Labor & Industry at: https://doli.virginia.gov.

J. **WORKERS' COMPENSATION**: Firm will (i) obtain and maintain a workers' compensation policy for all employees in accordance with applicable law, and (ii) comply with all federal and/or state laws and regulations pertaining to Workers' Compensation requirements for insured or self-insured programs.

K. **DRUG-FREE WORKPLACE**: Firm, its agents and employees are prohibited, pursuant to *Governing Rules* §11, and the Commonwealth of Virginia, Department of Human Relations Management Policy No. 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, the Firm agrees to (i) provide a drug-free workplace for the Firm'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 Firm's workplace and specifying the actions that will be taken against employees for violation of such prohibition: (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Firm that the Firm maintains a drug-free workplace: and (iv) includes 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 providing services under this Agreement.

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 Firm, 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 Agreement.

L. **VIRGINIA FOIA**: Nothing contained herein is intended to limit VCU's compliance with the Virginia Freedom of Information Act ("VFOIA"). For clarity, agreements and pricing between VCU and its vendors are not considered to be exempt from VFOIA requests.

M. **STATUTORY DAMAGES**: VCU is not authorized to waive damages granted or otherwise available by statute.

N. **SOVEREIGN IMMUNITY**: VCU is an agency of the Commonwealth of Virginia and is afforded the protection of sovereign immunity under Virginia law. Any claims against VCU or the Commonwealth are subject to the requirements established under Virginia law for bringing such claims against VCU or the Commonwealth, including the Virginia Tort Claims Act (Virginia Code §§ 8.01-195.1 et seq.) and other applicable statutes relating to claims against the Commonwealth or its agencies. Notwithstanding any other provision, nothing in this Agreement shall be deemed to be or construed as a waiver of VCU's or the Commonwealth's sovereign immunity, or any other applicable requirements under Virginia law for bringing claims against VCU or the Commonwealth. The total cumulative liability of the University, its officers, employees, and agents in connection with this Agreement or in connection with any goods, services, actions or omissions relating to this Agreement, shall not under any circumstance exceed payment of the maximum purchase price.

O. **REPRESENTATIONS AND WARRANTIES**: All representations and warranties made by the University are made to the best of its knowledge at the time the representation or warranty is made. University will use its best efforts to comply with all conditions and restrictions on its accounts and the services provided hereunder.

P. **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. If requested, the Firm must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration Additionally, in accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

All information technology ("Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

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

Compliance with the foregoing nonvisual access standards shall not be required if University's Executive Director of Procurement Services determines (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Firm must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration. The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, *Virginia Code* §§ 2.2-3500 through 2.2-3504.

Q. **ARBITRATION:** Neither Party shall be compelled to agree to any form of binding alternative dispute resolution, but may request and/or opt to participate in non-binding alternative dispute resolution in its sole discretion.

R. **CONTRACTUAL CLAIMS PROCEDURE**: *Governing Rules § 53* (similar to the Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments) requires Firms 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 Firm's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

1. Firm must provide the written claim to:
   Assistant Director of Purchasing
   Virginia Commonwealth University
   Office of Procurement Services
   912 West Grace Street
   Box 980327
   Richmond, Virginia 23298

2. Although Firm may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section 1 above, Firm must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Purchasing if it wishes to pursue its claim.

3. Upon receiving the written claim, the Assistant Director of Purchasing will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Firm. If such discussion is to be held, the Assistant Director of Purchasing will contact Firm and arrange such discussion. The manner of conducting such discussion will be as Assistant Director of Purchasing and Firm mutually agree.

4. The Assistant Director of Purchasing will mail his or her decision to Firm within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.

5. Firm may appeal the decision to:

   Executive Director of Procurement Services
   Virginia Commonwealth University
   Office of Procurement Services
   912 West Grace Street
   Box 980327
   Richmond, Virginia 23298

   Provide a written statement explaining the basis of the appeal within fifteen (15) calendar days after Firm's receipt of the decision.

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

7. The Executive Director of Procurement Services will mail his or her decision to Firm within 60 days after the receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

Nothing in this procedure will preclude either party from filing a claim in any court of the Commonwealth of Virginia to seek legal or equitable remedy if a dispute should arise, in addition to such other remedies as are expressly provided in this Agreement. Firm may not, however, file such claim unless and until it has complied fully with the procedure set forth in this provision.

S. **PAYMENT OFFSET**: In the event any payment from VCU to Firm is intercepted and offset by the federal government or the Commonwealth of Virginia pursuant to applicable law, such payment shall be deemed received in full by Firm for the applicable services or goods. Firm acknowledges that it shall not seek additional payments from VCU, suspend services, or refuse to perform under this Agreement solely due to such lawful offset. This provision shall not limit Firm's rights to pursue remedies directly with the applicable governmental entity responsible for the offset, nor shall it preclude Firm from enforcing its rights under this Agreement in the event of non-payment unrelated to such offset.

T. **PURCHASING MANUAL**. This Agreement is subject to the provisions of the Commonwealth of Virginia *Purchasing Manual for Institutions of Higher Education and Their Vendors* (*Purchasing Manual*) and any subsequent revisions, which is available on Procurement and Supplier Diversity Services website at: https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf.

U. **REALSOURCE REGISTRATION**: The Firm is required to register in VCU's source-to-pay platform, RealSource, upon signing an agreement with VCU. For information on registering, visit realsource.vcu.edu. Registration is free, and registered vendors shall have access to purchase order, invoice, and payment information. Firm is responsible for the security of its RealSource portal account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of the Firm's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to the Firm's failure to update or protect its account information. If this is a cooperative procurement, this clause shall apply to orders placed by VCU only.

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

W. **eVA REGISTRATION**: The eVA Internet electronic procurement solution is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal, found at www.eva.virginia.gov, 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. Firm 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.

Firm shall be responsible for the security of its eVA account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of Firm's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to Firm's failure to update or protect its account information.

X. **eVA FEES**: Unless the procured services are exempt pursuant to eVA standard, Firm will be subject to an eVA transaction fee, for which Firm will be invoiced by Commonwealth of Virginia, Department of General Services. The Commonwealth shall assess eVA transaction fees as specified below for each order resulting from this Agreement. The Vendor transaction fee (which is subject to change) is:

1. DSBSD-certified Small Businesses: 1%, capped at $500 per order.
2. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at $1,500 per order.

The specified Vendor transaction fee will be invoiced by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and the invoice is payable 30 days after the invoice date. ***Firm shall be prohibited from recouping or seeking reimbursement of the eVA fee by invoicing the University for the fee.***

Y. **SMALL BUSINESS AND SUPPLIER DIVERSITY (SBSD) CERTIFIED BUSINESSES REPORTING:** If Firm has a SBSD plan or is required to have a SBSD plan, the Firm will identify and fairly consider SBSD Firms for subcontracting opportunities when qualified SBSD firms are available to perform a given task required under this Agreement. Firm will submit a quarterly SBSD business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January.

Firm will submit the quarterly SBSD business reports, based upon the Firm's proposed commitment to:

VCU SBSD Reporting
swamreporting@vcu.edu

The quarterly SBSD business reports will contain the following information:

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

Firm's failure to provide SBSDreports on a quarterly basis which contain the information required by this section and/or Firm's failure to comply with the plan for utilizing SBSD businesses submitted by Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to Section 9(G)(4) of the *Purchasing Manual.*

Z. **FEDERAL PROVISIONS**: For Contracts funded by a U.S. Government grant or contract, the following provisions found in Appendix II of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule (2 CFR Part 200, et al) shall be incorporated and made a part of this Contract.

AA. **LIMITATION OF LIABILITY**: Firm shall be liable for the direct damages caused by the negligence of itself, its officers, employees, and agents in connection with this Agreement or any goods, services, actions, or omissions relating to this Agreement.

BB. **GRAMM-LEACH-BLILEY ACT**: If applicable, the Firm shall comply with the Act by implementing and maintaining appropriate safeguards to protect and prevent unauthorized release of student, faculty and staff nonpublic information. Nonpublic information is defined as social security numbers, or financial transactions, bank, credit, and tax information.

CC. **INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)**: If Firm 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 exportctrl@vcu.edu and receive prior written authorization from, the University's Export Compliance Program before delivery. The notification provided by the supplier shall include the name of the Virginia Commonwealth University 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. Firm 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.

DD. **COOPERATIVE PROCUREMENT / USE OF AGREEMENT BY THIRD PARTIES:** It is the University's intent to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institution, or any University-related foundation (Additional Users) may access this Agreement if authorized by Firm.

To that end and if agreeable with the Firm, upon written request from Additional Users the Firm may allow access to the contract. Although the University desires to provide access on such contract to Additional Users, the Firm is not required to provide such access. A Firm's willingness to provide this access to Additional Users, will not be a consideration in awarding this contract. Although the Additional Users have access to any resulting contract, Additional Users are not bound to use the contract and any use of the contract is strictly optional. If the Additional Users choose to access the contract and the Firm agrees to such access, the terms and conditions of the contract will be in full force and effect as between the Additional Users and the Firm. VCU will have no responsibility for the resolution of any contractual disputes, or for payment for services rendered which may arise from an Additional User accessing the contract. The Firm understands and agrees that it shall not have any recourse against VCU with respect to any claim it may have against another Additional User that accessed this contract.

EE. **SUBCONTRACTS**: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Firm desires to subcontract some part of the work specified herein, the Firm shall furnish the University with the names, qualifications and experience of their proposed subcontractors. The Firm shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.

FF. **VCU CAMPUS COMPLIANCE**: Any Firm personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use, and conduct within such facilities. Please note that VCU is a smoke and tobacco-free campus (VCU Smoke and Tobacco-Free Campus Policy). In addition, if on-campus access, identification cards, or parking are required to perform or meet Firm's obligations under this Agreement, the Firm shall comply with all applicable University procedures:

- Information on University identification cards is available at: https://cardservices.vcu.edu/
- Building access requirements are outlined at: https://cardservices.vcu.edu/access-control/building-access/
- Contractor parking information is available at: https://parking.vcu.edu/parking/contractors/

All costs associated with obtaining on-campus University identification, access credentials, background checks, or parking are the responsibility of the Firm unless otherwise stated in writing by the University.

GG. **CRIMINAL BACKGROUND INVESTIGATION**: If Firm employees and agents will be on the VCU campus, or have access to protected data as defined herein, Firm must comply with the following: Firm shall ensure that its employees, full-time or part-time, including newly hired, re-hired, seasonal, and/or temporary, who may have access to VCU confidential or proprietary information, or data about VCU personnel or students, have passed a criminal background check pursuant to the *Virginia Code* § 2.2-1201.1. Criminal background checks shall comply with the standards set forth in VCU's employment policies found at:

https://policy.vcu.edu/doctract/documentportal/08DA32A63EDBCEAAB4962445672CE290

Specifically, Firm shall ensure an investigation is conducted by a third-party vendor utilizing courthouse records and national databases to obtain records within the past seven (7) years. Convictions related to drugs, violence and/or sexual behavior are generally considered job related due to the nature of the VCU environment and the need to provide reasonable levels of protection for students, patients, employees, visitors, and institutional resources.

HH. **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 Firm (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. The Parties agree that any such intellectual property created as a result of this agreement shall be deemed as a Work-for-Hire, as defined under federal copyright law. For the avoidance of doubt, Firm retains all rights in its pre-existing intellectual property, including its proprietary tools, methods, processes, know-how, templates, and any other intellectual property developed outside the scope of this Agreement. Firm 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.

Firm 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.

II. **BRAND STANDARDS**: Firm 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. Firm agrees that the University, in its sole discretion, will determine Firm'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. For additional guidance, Firm should consult the VCU Brand Guidelines at https://brand.vcu.edu/vcu-university/guidelines (requires registration) or contact University Trademark and Licensing (trademarks@vcu.edu.)

JJ. **TRADEMARKS/LOGOS AND PROMOTIONAL ACTIVITY**: The University retains all rights, title and interest to its trademarks, logos and other intellectual property. Firm shall obtain approval in writing from the VCU Division of University Relations prior to use of any VCU marks, name, or logos. During the Term of the Agreement, Firm 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 Firm request that the University or any University employee endorse Firm or Firm's goods and/or services. Promotional Materials may include the name "Virginia Commonwealth University" and VCU's approved institutional logo solely to identify accurately the University as an entity to whom Firm provides goods and/or services. Furthermore, the University grants Firm a limited, nonexclusive license to display the University's trademarks/logos solely as they are made available to Firm in connection with Firm's goods and/or services.

KK. **MARKETING AT VCU**: The University encourages Firm to appropriately and specifically market itself to applicable end-using University departments that may be interested in Firm's goods and/or services. However, Firm shall not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that Firm engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement.

LL. **FAILURE TO DELIVER GOODS OR SERVICES**: In case of failure to deliver goods or services in accordance with the Agreement terms and conditions, VCU, after oral or written notice, may procure them from other sources and hold the Firm responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which VCU may have.

MM. **SHIPPING:** Firm shall ship all goods FOB (Freight on Board) Destination at the actual freight rate based upon the actual weight of the goods to be shipped. All prices unless otherwise specified are FOB Destination, Freight Prepaid and Allowed.

NN. **INSTALLATION DELIVERY AND STORAGE**: If applicable, it shall be the responsibility of the Firm to make all arrangements for delivery, unloading, receiving and storing materials in a VCU building during installation. VCU will not assume any responsibility for receiving these shipments. Firm shall check with VCU and make necessary arrangements for security and storage space in the building during installation.

OO. **TESTING AND INSPECTION:** To the extent applicable, VCU reserves the right to conduct any testing/inspection it may deem advisable to ensure goods and services conform to the specifications/Agreement.

PP. **TAXES:** Firm acknowledges all sales to 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 Agreement shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

QQ. **AUDIT:** The Firm shall retain all books, records, and other documents relative to this Agreement 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.

RR. **FAVORED CUSTOMER:** Firm represents that the prices, terms, warranties, and benefits are comparable to or better than the equivalent terms being offered by the Firm to any present customer.

SS. **ADDITIONAL GOODS AND SERVICES:** The University reserves the right to have the Firm 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 the Firm. These additional goods and services will be provided to the University at Favored Customer pricing.

TT. **EXTRA CHARGES NOT ALLOWED:** The Agreement price shall reflect all fees to be incurred for the performance of the Agreement, including all applicable freight and installation charges. Any additional fees that arise during the performance of the Agreement shall only be paid if approved by the University prior to incurring such fees.

UU. **INDEMNIFICATION:** Firm agrees to indemnify, defend, and hold harmless VCU, the Commonwealth of Virginia, and their officers, employees and agents from any claim, damage, liability, injury, expense or loss, including defense costs and attorneys' fees, arising from Firm's negligence under this Agreement. Accordingly, VCU shall promptly notify Firm of any claim or action brought against VCU in connection with this Agreement. Upon such notification, and at the request and direction of VCU and/or the Office of the Attorney General, Firm will immediately defend any such claim or action pursuant to the provisions and requirements of Virginia Code § 2.2-514.

VV. **CONFIDENTIAL INFORMATION**: "Confidential Information" means all information of a party ("Disclosing party") disclosed or made available to the other party ("Receiving party") that (i) is clearly marked or identified as such at the time of disclosure or within a reasonable time thereafter; or (ii) should be reasonably known by the Receiving party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. Confidential Information of VCU shall include, but not be limited to information about VCU personnel and students of VCU to the extent such information is not available to the public domain in accordance with the laws of the Commonwealth of Virginia and FERPA. Firm shall use its reasonable efforts to prevent and protect Confidential Information from unauthorized use or disclosure, with at least the same degree of care that Firm uses to protect its own confidential and proprietary information, but in no event less than a reasonable degree of care under the circumstances. Each Party will only disclose the other Party's Confidential Information to its employees, consultants, or subcontractors only on a need-to-know basis, provided that such employees or subcontractors are subject to confidentiality obligations no less restrictive than those contained herein. Upon the completion of the services and upon request of VCU, Firm shall return all Confidential Information received in written format, including copies or reproductions or other media containing Confidential Information within seven (7) calendar days of such request.

WW. **FERPA:** To the extent that VCU provides to the Firm any student information that is an "education record" protected by the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, 34 C.F.R. Part 99, including a student's address, email address or phone number, which is protected by the Code of Virginia § 23.1-405(C), VCU hereby designates Firm as a school official with a legitimate educational interest in the education records of the participating student(s) to the extent that access to VCU's records is required by Firm to fulfill the obligations of this Agreement. Firm will (1) limit access to such information to only those employees or agents with a need to know it, (2) use the information only for the purpose for which it was disclosed, and (3) not disclose the information to any third party without the prior written authorization of the individual student. Further, Firm agrees to provide to the University, upon request, any information about a student.

XX. **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 Firm'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 Firm 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.

YY. **FORCE MAJEURE:** Neither Party will be deemed in default or otherwise liable hereunder due to its inability to perform by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, governmental restrictions, act of public enemy, embargo, war, act of God, or any municipal, county, state, national or international ordinance or law or any executive, administrative, judicial or similar order, including orders from any governing body (which order is not the result of any act or omission to act which would constitute a default under this Agreement), or any failure or delay of any transportation, power, or other essential thing required, or similar causes beyond the Party's control. Any delay in performance will be no greater than the event of force majeure causing the delay. If the delay or failure in the performance of the Party claiming Force Majeure continues for thirty (30) days or more, then the Party not claiming Force Majeure may terminate this Agreement by written notice to the other Party without penalty. Any funds paid will be reimbursed pro rata based on Services not provided.

ZZ. **APPLICABLE LAW AND COURTS**: This Agreement shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia without regard to choice of law principles. The Parties agree that all disputes arising under this Agreement shall be brought in the state or federal courts located in Richmond, Virginia. To the extent any provision of the Agreement is prohibited by Virginia law, or is otherwise not authorized by Virginia law, due to VCU's status as an agency of the Commonwealth of Virginia, such provision is null and void. Each party shall be responsible for its own legal fees and costs unless otherwise ordered by a court of law.

AAA. **FEDERAL TARIFFS:** In the event that a federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in Firm's costs to a level that renders performance under the Agreement impracticable, VCU may agree, at its discretion, to an increase to the purchase price for the affected good. No increase in purchase price may exceed the actual tariff imposed on the goods imported or purchased by the Firm that are provided to VCU under this Agreement.

1. Prior to VCU agreeing to a price increase pursuant to this provision, the Firm must provide to VCU the following documentation, all of which must be satisfactory to VCU:

    a) evidence demonstrating: (i) the unit price paid by Firm as of the date of award for the good or raw material used to furnish the goods to VCU under this Agreement, (ii) the applicability of the tariff to the specific good or raw material, and (iii) Firm's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow VCU to verify that the tariff is the cause of the price change;

    b) a certification signed by Firm that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by VCU at a lower cost from a different source located outside of the country against which the tariff has been imposed;

    c) a certification signed by Firm that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Firm would otherwise be unable to perform under this Agreement without such price increase; and

    d) as requested by VCU, written instructions authorizing VCU to request additional documentation from Firm's suppliers to verify the information submitted by Firm.

2. If VCU agrees to a price increase pursuant to this provision, the parties further agree to add the following terms to this Agreement:

    a) During the Term and for five (5) years after the termination of this Agreement, Firm shall retain, and VCU and its authorized representatives shall have the right to audit, examine, and make copies of, all of Firms books, accounts, and other records related to this Agreement and Firm's costs for providing goods to VCU, including, but not limited to those kept by the Firm's agents, assigns, successors, and subcontractors.

    b) Notwithstanding anything to the contrary in this Agreement, VCU shall have the right to terminate this Agreement for VCU's convenience upon 15 days' written notice to Firm.

In the event the import duty or tariff is repealed or reduced prior to termination of this Agreement, the increase in VCU's contract price shall be reduced by the same amount and adjusted accordingly.

Any material misrepresentation made or caused to be made by a Firm, increasing the price and/or costs in a payment obligation due from the University, may be deemed fraud under the law, including but not limited to the Virginia Fraud Against Taxpayers Act, and such misrepresentation may be subject to penalties and damages.

BBB. **PAYMENT TERMS UNIVERSAL APPLICATION:** Firm acknowledges and agrees that the payment method agreed to under this Agreement shall apply to all invoices and payments related to this Agreement and any other current or future agreements, purchase orders, or transactions involving the same Firm, regardless of remit-to address or locations. If VCU and Firm execute multiple agreements with different payment methods specified, VCU may, in its sole discretion, select and apply one preferred payment method across all such agreements and associated transactions for consistency and administrative efficiency. VCU may update the payment method in the Firm's vendor file without further notice.

Any Firm-requested changes must be submitted in writing and are subject to approval by the Office of Procurement Services. Firm may, at any time, upgrade to either the Virtual Card or Premium ACH (Paymode-X) payment method by coordinating with Bank of America or Paymode-X. These upgrades do not require an amendment to the Agreement but VCU reserves the right to reject or deny a change deemed not in the best interest of the University.

CCC. **MODIFICATION OF THE AGREEMENT:**

1. The parties may agree to modify the scope of the Agreement. An increase or decrease in the price of the Agreement resulting from such modification shall be agreed by the parties as a part of their written Agreement to modify the scope of the Agreement.
2. The Purchasing Agency may order changes within the general scope of the Agreement at any time by written notice to the Firm. Changes within the scope of the Agreement 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 Firm shall comply with the notice upon receipt. The Firm shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings.
3. Material, substantive modifications, changes, and amendments to the Agreement must be in a writing executed by authorized representatives of each party.

DDD. **TERMINATION OF AGREEMENT:**

1. Either Party may terminate this Agreement if the other Party materially breaches this Agreement and such breach is not cured within thirty (30) days after written notice to the breaching Party.
2. University reserves the right to terminate this Agreement, in part or in whole, without penalty, upon sixty (60) days written notice to the Firm.
3. Either Party may terminate this Agreement after the initial twelve (12) months of this Agreement upon sixty (60) days written notice to the other Party.

EEE. **ENTIRE AGREEMENT**: This is the entire agreement between the University (including University employees and other End Users) and Firm. The Agreement shall not be assignable by Firm in whole or in part without the written consent of the University. In the event that Firm enters into terms of use agreements or other agreements or understanding, whether electronic, click-though, 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. 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.

ATTACHMENT B
VIRGINIA COMMONWEALTH UNIVERSITY
SPECIFIC CONTRACTUAL PROVISIONS

A. **INSURANCE**: Firm shall procure and maintain and require any Subcontractor to procure and maintain for the duration of the Agreement, insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the Firm, its agents, representatives, employees or subcontractor. Beginning on the Effective Date and continuing during the Initial Term of the Agreement and any Renewals or extensions thereof, the Firm, at the Firm'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 the University, the following:

NOTE: '**X**'s indicate insurance is needed, whereas empty parentheses indicate insurance is not.

(X) *Commercial General Liability (CGL)*: Providing CGL coverage on an "occurrence" basis, including for (X) bodily injury liability including: death, assault or battery, (X) property damage liability for damage to property of third parties, (X) personal injury liability, (X) advertising injury liability, (X) contractual liability, () drone liability, (X) products / completed operations liability and () full liquor liability arising out of the service of liquor (e.g., Dram shop liability), () environmental liability, with limits no less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate.

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

(X) *Workers' Compensation*: Providing coverage of at least the statutory amounts covering all employees, and employer's liability insurance with minimum limits of Five Hundred Thousand Dollars ($500,000) for each coverage part.

(X) Professional Liability Insurance: Providing coverage for professional designations or licenses where professional services are being rendered with minimum limits of One million dollars ($1,000,000) of coverage.

(X) *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).

(X) *Cyber Security Liability*: Providing coverage against claims made for financial losses caused by cyberattacks and/or data breaches with limits of liability of at least Five Million Dollars ($5,000,000) (subject to higher requirement depending on the nature of the work).

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

Additional Insured Status

The Commonwealth of Virginia, and Virginia Commonwealth University, 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, the Firm's insurance coverage shall be primary insurance and any insurance or self-insurance maintained by the Commonwealth of Virginia, Virginia Commonwealth

University, its officers, employees and agents shall be in excess of the Firm'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 thirty (30) calendar days prior written notice to the University.

Waiver of Subrogation
The Firm will grant to the University a waiver of any right to subrogation which any insurer of said Firm may acquire against the University by virtue of the payment of any loss under such insurance. The Firm 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 University 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 the University. University may require the Firm 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, the Firm must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

Verification of Coverage
The Firm shall furnish University 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 the University before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Firm's obligation to provide them. University 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
University reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

B. **DATA PROTECTION:** Sensitive, non-public "VCU 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 the Firm providing goods or services to VCU will receive, create, or come into non-incidental contact with VCU Data, the Firm agrees to abide by the terms and conditions of the Data Protection Addendum ("DPA"), Attachment C. The Data Protection Addendum may be updated from time to time and it is the Firm's obligation to review the Data Protection Addendum in effect at the time of its provision of goods or services to VCU. Further, if the Firm providing goods or services to VCU will receive, create, or come into non-incidental contact with patient or VCU health plan participant Protected Health Information as that term is defined in 45 C.F.R. § 160.103, the Firm may be a Business Associate, and agrees to abide by the terms and conditions of the Business Associate Addendum in addition to the Data Protection Addendum should a determination be made that the Firm is a Business Associate.

C. **ORDERING PROCEDURES:** Goods and/or Services will be ordered in the manner described in this section. The University makes no guarantee as to the volume of business that may be provided under this Agreement. A proposal for Goods and/or Services must be specifically requested of the Firm by a University department. When such Goods and/or Services are specifically requested, Firm will prepare a proposed statement of work. Additional contractual provisions may not be introduced in the proposed statement of work and the statement of work may not be marked as proprietary or confidential. Statements of work will be used solely to describe the personnel, services, deliverables, and applicable fees, and will be mutually agreed upon by the University and Selected Firm. **The University will not be required to sign or otherwise execute the statements of work.**

If the University desires to have Firm provide the Goods and/or Services described in the proposed statement of work, the University will issue a Purchase Order. When the University Purchase Order is issued, a contract exists between Selected Firm and the University for the specific Goods and/or Services described in the applicable statement of work.

D. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The Firm shall extend any special educational or promotional sale prices or discounts immediately to the University during the term of this Agreement. Such notice shall also advise the duration of the specific sale or discount price.

E. **TRAVEL EXPENSES:** Firm must receive written approval from VCU before initiating travel to any VCU campus or location. For travel that is approved in writing by VCU, Firm shall submit its reasonable out-of-pocket expenses to VCU. Travel expenses must be clearly documented in the form of receipts. VCU shall reimburse Firm for its reasonable out-of-pocket expenses in accordance with, and limited by, the VCU Travel Guidelines & Procedures. VCU reserves the right to dispute the reasonableness of, and reject, any travel expense.

ATTACHMENT C
VIRGINIA COMMONWEALTH UNIVERSITY
DATA PROTECTION ADDENDUM

FIRM[2]: Capture, LLC dba Capture Higher Ed

This Data Protection Addendum ("Addendum") is by and between **Virginia Commonwealth University** ("VCU") and the **Firm** (each a "Party" and collectively the "Parties"). It is applicable only in those situations where the Firm provides goods or services under which necessitate that the Firm create, obtain, transmit, use, maintain, process, or dispose of VCU Data[3] (as defined in the Definitions Section of this Addendum) in order to fulfill its obligations to VCU.

1. DEFINITIONS

a. "End User" means an individual authorized by VCU to access and use the Services provided by the Firm under this agreement.

b. "Protected VCU Data" includes all data defined as Highly Sensitive, Sensitive, or Internal Use data that is not intentionally made generally available by VCU on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student, and personnel data.

c. "Securely Destroy" means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88, REV 1 guidelines relevant to data categorized as high security.

d. "Security Breach" means the unauthorized access, use or disclosure that compromises or threatens to compromise the confidentiality, integrity, or availability of VCU Data

e. "Services" means any goods or services acquired by VCU from the Firm.

f. "VCU Data" includes Protected VCU Data and any other information that is created, possessed or used by VCU or is intentionally made generally available by VCU on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student, and personnel data.

g. "Audit" includes or may include a chronological record that reconstructs and examines the sequence of activities surrounding or leading to a specific operation, procedure, or event in a security-relevant transaction from inception to final result.

2. RIGHTS AND LICENSE IN AND TO VCU DATA

The parties agree that as between them, all rights including all intellectual property rights in and to VCU Data shall remain the exclusive property of VCU, and Firm has a limited, nonexclusive license to use these data as provided in this agreement solely for the purpose of performing its obligations hereunder. This agreement does not give a party

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[2] The term "Firm" shall have the same meaning and be interchangeable with the terms "Vendor", "Supplier" and/or "Contractor" as such terms may be used/referenced in this Addendum or the underlying agreement.

[3] If the Firm providing goods or services to VCU will receive, create, or come into non-incidental contact with patient or VCU health plan participant Protected Health Information (PHI) as that term is defined in 45 C.F.R. § 160.103, the Firm may be a Business Associate, and agrees to abide by the terms and conditions of the Business Associate Addendum in addition to the Data Protection Addendum should a determination be made that the Firm is a BAA.

any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the agreement.

3. DATA PRIVACY

a. Firm will use VCU Data only for the purpose of fulfilling its duties under this agreement and will not share such data with or disclose it to any third party without the prior written consent of VCU, except as required by this agreement or as otherwise required by law.

b. Protected VCU Data will not be stored outside the United States without prior written consent from VCU.

c. Firm will provide access to VCU Data only to its employees and subcontractors who need to access the data to fulfill Firm obligations under this agreement. Firm will ensure that employees who perform work under this agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this agreement.

d. The following provision applies only if Firm will have access to VCU's education records as defined under the Family Educational Rights and Privacy Act (FERPA): The Firm acknowledges that for the purposes of this agreement it will be designated as a "school official" with "legitimate educational interests" in VCU education records, as those terms have been defined under FERPA and its implementing regulations, and the Firm agrees to abide by the limitations and requirements imposed on school officials. Firm will use the education records only for the purpose of fulfilling its duties under this agreement for VCU's and its End User's benefit, and will not share such data with or disclose it to any third party except as provided for in this agreement, required by law, or authorized in writing by VCU.

4. DATA SECURITY, INTEGRITY, AND CONFIDENTIALITY

a. Firm will take reasonable measures, including the use of industry standard administrative, technical, and physical controls, such as redundant backups, access control and auditing, to protect VCU Data to ensure the integrity and availability of VCU Data against deterioration or degradation of data quality and authenticity. The Selected Firm will be responsible during the terms of this agreement, unless otherwise specified elsewhere in this agreement, for converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.

b. Firm will store and process VCU Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, such as network and system protection, access controls, and security auditing and monitoring, and to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will ensure the confidentiality and overall security of VCU Data, and be no less protective than those used to secure Firm's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, Firm warrants that all electronic VCU Data will be encrypted in transmission (including via web interface) in accordance with industry best practices in data encryption.

c. If the Firm stores, transmits, or processes Protected VCU Data as part of this agreement, the Firm warrants that the information will be stored in accordance with the practices and controls stated in the latest version of National Institute of Standards and Technology Special Publication 800-53 Moderate or the International Organization for Standardization and the International Electrotechnical Commission 27002 (ISO/IEC 27002).

d. Firm will use reasonable, appropriate industry-standard and up-to-date security tools and technologies in providing Services under this agreement.

5. EMPLOYEE BACKGROUND CHECKS AND QUALIFICATIONS

Firm shall ensure that its employees who will have potential access to VCU Data have passed reasonable and appropriate background screening and possess the qualifications and training to comply with the terms of this agreement.

6. SECURITY BREACH

a. Response. Upon becoming aware of a Security Breach, or of circumstances that are reasonably understood to suggest an actual or suspected Security Breach of VCU Data, Firm will immediately notify VCU consistent with applicable state or federal laws, fully investigate the incident, and cooperate fully with VCU's investigation of and response to the incident. Except as otherwise required by law, Firm will not provide notice of an actual or suspected Security Breach directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from VCU.

b. Liability. If Firm must under this agreement create, obtain, transmit, use, maintain, process, or dispose of Protected VCU Data, the following provisions apply:

1) In addition to any other remedies available to VCU under law or equity, Firm will reimburse VCU in full for all costs not covered by vendor's insurance incurred by VCU in investigation and remediation of any Security Breach caused by Firm, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Protected VCU Data exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach.

2) In addition to any other insurance coverage required by another contract/agreement with VCU, the Firm will for the duration of the term of the agreement, maintain at least $5 million Cyber Liability coverage with insurance companies that hold at least an A- financial rating with A.M. Best Company. In no event, should the Firm construe these minimum required limits to be their limit of liability to VCU.

3) VCU must be named as an Additional Insured on the Cyber Liability Insurance, and the proper name is "The Commonwealth of Virginia, and Virginia Commonwealth University, its officers, employees and agents." Upon VCU's request, the Selected/Firm Vendor will provide a Certificate of Insurance (COI).

7. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA

a. Except as otherwise expressly prohibited by law, Firm will immediately notify VCU of Firm's receipt of any subpoenas, warrants, or other legal orders, demands or requests seeking VCU Data; consult with VCU regarding its response; cooperate with VCU's reasonable requests in connection with efforts by VCU to intervene and quash or modify the legal order, demand or request; and provide VCU with a copy of its response.

b. If VCU receives a subpoena, warrant, or other legal order, demand or request (including request pursuant to the Virginia Freedom of Information Act) seeking VCU Data maintained by Firm, VCU will promptly provide a copy to Firm. Firm will promptly supply VCU with copies of data required for VCU to respond in a timely manner, and will cooperate with VCU's reasonable requests in connection with its response.

8. DATA TRANSFER UPON TERMINATION OR EXPIRATION

a. Upon termination or expiration of this agreement, Firm will ensure that all VCU Data are securely returned or destroyed as directed by VCU in its sole discretion. Transfer to VCU or a third party designated by VCU shall occur within a reasonable period of time, and without significant interruption in service. Firm shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of VCU or its transferee, and to the extent technologically feasible, that VCU will have reasonable access to VCU Data during the transition.

b. Upon termination or expiration of this agreement, and after any requested transfer of data, Firm must Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which the Firm might have transferred VCU data. The Firm agrees to provide documentation of data destruction to VCU.

c. Firm will notify VCU of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing VCU access to Firm's facilities to remove and destroy VCU- owned assets and data. Firm shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to VCU. Firm will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to VCU. Firm will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on VCU, all such work to be coordinated and performed in advance of the formal, final transition date.

9. AUDITS

a. VCU reserves the right in its sole discretion to perform audits of Firm at VCU's expense to ensure compliance with the terms of this agreement. The Firm shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which the Firm must create, obtain, transmit, use, maintain, process, or dispose of VCU Data.

b. If the Firm must under this agreement create, access, obtain, transmit, use, maintain, process, or dispose of Protected VCU Data or financial or business data which has been identified to the Firm as having the potential to affect the accuracy of VCU's financial statements, Firm will at its expense complete and keep up-to-date the latest Higher Education Collaborative Vendor Assessment Toolkit (HECVAT) Full Version questionnaire; conduct or have conducted, at least annually, a security audit by a third party with audit scope and objectives deemed sufficient by VCU, which attests the Firm's security policies, procedures, and controls; vulnerability scan by a third party of Firm's electronic systems and facilities that are used in any way to deliver electronic services under this agreement; assessments of the Firm's own service providers ("subservice providers") that are used by the firm to provide services to VCU; and formal penetration test by a third party of Firm's electronic systems and facilities that are used in any way to deliver electronic services under this agreement.

c. Additionally, the Firm will provide VCU upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under this agreement. VCU may require, at VCU expense, the Firm to perform additional audits and tests, the results of which will be provided promptly to VCU.

10. COMPLIANCE

a. Firm will comply with all applicable laws and industry standards in performing services under this agreement. Any Firm personnel visiting VCU's facilities will comply with all applicable VCU policies regarding access to, use of, and conduct within such facilities. VCU will provide copies of such policies to Firm upon request.

b. Firm warrants that the service it will provide to VCU 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 Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Privacy and Security Rules issued thereunder, the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), the Financial Modernization Act of 1999 (“Gramm-Leach-Bliley Act”), the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act, the Americans with Disabilities Act, Section 508 of the Rehabilitation Act (29 U.S.C. 794d, as amended, and the Virginia Consumer Data Protection Act;

2) any privacy policy or practice applicable to any personal information that Customer or any User accesses, uses, collects, or maintains hereunder, including, without limitation any practice required in connection with the processing of credit card data, including the Payment Card Industry Data Security Standards (“PCI-DSS”); and

3) Federal Export Administration Regulations, Federal Acquisitions Regulations, Defense Federal Acquisitions Regulations and Department of Education guidance.

c. If PCI-DSS is applicable to the Firm service provided to VCU, the Firm agrees to: Store, transmit, and process VCU Data in scope of the PCI-DSS in compliance with the PCI-DSS; and Attest that any third-party providing services in scope of PCI-DSS under this agreement will store, transmit, and process VCU Data in scope of the PCI-DSS in compliance with the PCI-DSS; and Provide either proof of PCI-DSS compliance or a certification (from a recognized third-party security auditing firm), within 10 business days of the request, verifying Firm/Vendor and any third party who stores, transmits, or processes VCU data in scope of PCI-DSS as part of the services provided under this agreement maintains ongoing compliance under PCI-DSS as it changes over time; and Store, transmit, and process any VCU Data in scope of the PCI DSS in a manner that does not bring VCU’s network into PCI-DSS scope; and Attest that any third-party providing services in scope of PCI-DSS under this agreement will store, transmit, and process VCU Data in scope of the PCI-DSS in a manner that does not bring VCU’s network into PCI DSS scope.

11. SURVIVAL

The Firm’s obligations under Section 8 shall survive termination of this agreement until all VCU Data has been returned or Securely Destroyed.

ATTACHMENT D
VIRGINIA COMMONWEALTH UNIVERSITY
PRICING

Pricing & Payment Schedule

UNDERGRADUATE CAPTURE COMMIT

Digital Recruitment Solutions	Year 1	Year 2	Year 3	Year 4
	Initial term	*Initial term*	*(Renewal 1)*	*(Renewal 2)*
Undergraduate Solutions: 12 Month Inquiry, Application, Yield Generation Campaigns to Include: • 3 Behavioral Email Series • 30 Ad Hoc Emails **12-Month Digital Marketing Solutions for Brand Awareness, Inquiry Generation, and Application Generation may Include:** • Google Search • Google Display • Retargeting • Social Display (Meta, TikTok, Snapchat Etc.)* • HHIP Targeting **Software Platform:** • Stealth Identification • CRM Integration • Dynamic Content & Marketing Automation • Analytics & Reporting • Apply Model • Enroll Model **Print – 50,000 Pieces**	$339,746	$339,746	$339,746	$339,746
Capture Investment	**$339,746**	**$339,746**	**$339,746**	**$339,746**
***META, Snapchat and TikTok require additional fees, paid directly by the school to these vendors (est. cost $13,600 per contract year).**	**$13,600**	**$13,600**	**$13,600**	**$13,600**
Total Program Investment	**$353,346**	**$353,346**	**$353,346**	**$353,346**

TRANSFER ACTIVATE

	Year 1	Year 2	Year 3	Year 4
	Initial term	*Initial term*	*(Renewal 1)*	*(Renewal 2)*
Transfer Solutions: 12 Month Inquiry Generation Campaigns to Include: • 1 Behavioral Email Series • 15 Ad Hoc Emails 9-Month Digital Marketing Solutions for Brand Awareness, Inquiry Generation: • Google Search • Google Display • Retargeting • Social Display (Meta, TikTok, Snapchat Etc.)* • HHIP Targeting Software Platform: • Stealth Identification • CRM Integration • Dynamic Content & Marketing Automation • Analytics & Reporting	$59,677	$59,677	$59,677	$59,677
Capture Investment	**$59,677**	**$59,677**	**$59,677**	**$59,677**
***META, Snapchat and TikTok require additional fees, paid directly by the school to these vendors (est. cost $3,500 per contract year).**	**$3,500**	**$3,500**	**$3,500**	**$3,500**
Total Program Investment	**$63,177**	**$63,177**	**$63,177**	**$63,177**
Total Investment	**$416,523**	**$416,523**	**$416,523**	**$416,523**

For Cooperative Purchasing:
Deliverables & Services Included in the Fixed Fee

All campaign management, creative development, data science, predictive modeling, and platform setup services are fully included under the managed service model with no additional management fees:

Solution Category	Deliverables Included	Scope / Volume	Initial Term Cost to Premium / Other Institutions
Software Platform	• Stealth Anonymous Visitor Identification • Bidirectional Slate CRM Integration & Data Sync • Dynamic Content & Marketing Automation (up to 30 campaigns/yr) • Analytics & Real-Time Dashboards	24/7 Platform Access for unlimited users	$15,000–$65,000 based on school size and population (i.e. undergraduate, graduate, transfer populations)
Predictive Modeling	• **APPLY Model:** Applicant prediction scoring (99% accuracy) • **ENROLL Model:** Yield prediction scoring (98% accuracy) • **SearchR Model:** ZIP-code level algorithmic search modeling	• Daily score updates; unlimited APPLY iterations • Up to 15 ENROLL iterations/cycle	Apply model is included at no charge within the Behavioral Intelligence Platform for the undergraduate population only. SearchR is included at no charge for clients contracted with Capture for Search Consulting. ENROLL is an add-on product.
Email Marketing	• **Undergraduate:** 3 Behavioral Email Series + 30 Ad-Hoc Emails/yr • **Transfer:** 1 Behavioral Email Series + 15 Ad-Hoc Emails/yr	Continuous 12-month messaging flows	$12,000–$45,000 depending on audience, number of campaigns, and length of campaigns.
Digital Advertising & Social Media	Full-funnel digital campaign design and media execution across: • Google Search, Google Display, & Web Retargeting • Household IP & GEO-IP Targeting • Paid Social Display (Meta, TikTok, Snapchat, Reddit)	Continuous 12-month campaigns across Senior, Underclassmen, and Transfer cohorts	Capture offers custom digital advertising packages based on the audience, length of campaign, and advertising platform. Custom packages begin at $15,000.
Direct Mail Print	Personalized direct mail targeting top APPLY-ranked prospects (full-service	50,000 pieces annually	$2–$4/piece including postage. Pricing depends

	design, production, mailing, and postage included)		on size of mailer (postcard/trifold/letter).
Search Consulting	Parameter design, historical data analysis, and multi-source name integration (ACT/Encoura, College Board, Niche, etc.)	Unlimited rounds of search name purchases per year	$16,000/yr
Strategic Account Services	Dedicated Account Manager, Senior Enrollment Advisor, Project Managers, Creative Team, and Data Scientists; bi-weekly strategy calls, quarterly reviews, and annual ROI analysis	Continuous support throughout agreement	Included free with all products

ATTACHMENT E

AGREEMENT
PUBLICLY ACCESSIBLE CONTRACT (PAC)

This Agreement is entered into as of the date of last signature below, by and between Virginia Commonwealth University ("VCU" or "University"), on behalf of the Virginia Higher Education Procurement Consortium (the "Consortium") (collectively the "University"), and Capture, LLC dba Capture Higher Ed ("Vendor").

TERM

The term of this Agreement is until September 30, 2030. This end date coincides with the Primary Agreement's end date.

WITNESS

WHEREAS, the University and Capture, LLC dba Capture Higher Ed have executed an agreement, Contract # VCU-SVS-7305, dated 09/02/26 (the "Primary Agreement"), and included in the Primary Agreement is a third-party access / cooperative clause. Now therefore, the University and Vendor wish to express in this Agreement the specific terms that will allow third party access to the Primary Agreement.

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

A. Vendor will:

1. Pay the University 1% of all sales to accessing entities outside of the Consortium membership associated with the Primary Agreement (as the "PAC Annual Fee"). The PAC Annual Fee will be paid in exchange for marketing services provided by the University and the Consortium described below in Section II.
2. Fully support this marketing relationship by promoting the availability of the Primary Agreement to non-Consortium entities;
3. Provide quarterly sales reports detailing the amount of sales to each non-Consortium accessing entity; and

B. The University/Consortium will:

1. Promote the Primary Agreement on its website and through other channels (e.g., conferences) to non-Consortium members
2. Maintain an approved version of Capture, LLC dba Capture Higher Ed's logo on the Consortium website

C. Payment

1. Payment of PAC Annual Fee will arrive at the University no later than October 31st of each year. The University and Consortium will share the payments equally and allocate payments to the appropriate accounts.

   In the event of early termination of the Primary Agreement, this residual payment will arrive at the University no later than 45 calendar days from termination date of the Primary Agreement.

2. Payment of PAC Annual Fee will take the form of a check. Checks will be made payable to the University of Virginia and sent to:

   Constance Alexander, Office Manager
   Procurement and Supplier Diversity Services
   University of Virginia, Carruthers Hall
   PO Box 400202
   1001 N. Emmet Street
   Charlottesville, VA 22904

D. 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 electronic mail, when received (as verified by the email date and time) 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 as shown below.

If to the University:

Executive Director
Office of Procurement Services
912 West Grace Street, 5th Floor
Richmond, Virginia 23298-0327
(804) 828-1077
contracts@vcu.edu

If to Capture, LLC dba Capture Higher Ed

Geoff Broome, Account Manager
Capture, LLC dba Capture Higher Ed
2303 River Road, Suite 201
Louisville, KY 40206
Email: gbroome@capturehighered.com

ACCEPTANCE

Virginia Commonwealth University	Capture, LLC dba Capture Higher Ed
Signed by: John McHugh EE6DA7427C67468...	
Signature	Signature
John McHugh	Jim Lintner
Name	Name
Executive Director, Procurement Services	CFO
Title	Title
9/8/2026	09/02/26
Date	Date

Agreement #: VCU-SVS-7305-PAC

Master Agreement (MA) VCU-SVS-7305 for Firm Signature REV

Final Audit Report 2026-09-02

Created:	2026-09-02
By:	Lauren Gold (lgold@capturehighered.com)
Status:	Signed
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"Master Agreement (MA) VCU-SVS-7305 for Firm Signature RE V" History

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