



MASTER LICENSE AND SERVICES AGREEMENT

This **SUBSCRIPTION AGREEMENT** ("**Agreement**") is made and entered into as of December 17, 2022 ("**Effective Date**"), by and between Capture, LLC ("**Company**") and University of Mary Washington ("**Customer**"). Company and Customer are each referred to herein as a "**Party**" and are collectively referred to herein as the "**Parties**." In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement shall have their meanings specified below or elsewhere in this Agreement.

1.1 "**Company Data**" means information or data (excluding End User Data), that is compiled, generated or collected by the Subscription Service in connection with the access and use of the Subscription Service by Customer or End User or any information or data that identifies or describes the operation or performance of the Service.

1.2 "**Confidential Information**" means any information, whether oral, written, electronic, or in any other format, and whether technical or business in nature, regarding this Agreement, Company's products or business, including the Subscription Service, information regarding a Party's products, services, software, intellectual property, pricing, marketing and business plans, other information not generally known to the public and any other information received under circumstances reasonably interpreted as imposing an obligation of confidentiality; provided that, "Confidential Information" shall not include any of such information which: (a) was publicly available at the time of disclosure by the disclosing Party; (b) became publicly available after disclosure through no fault of the receiving Party; (c) was known to the receiving Party prior to disclosure by the disclosing Party; or (d) was rightfully acquired by the receiving Party after disclosure by the disclosing Party from a third party who was lawfully in possession of the information and was under no legal duty to the disclosing Party to maintain the confidentiality of the information.

1.3 "**Customer Data**" means information or data (excluding End User Data or Company Data), that is compiled, generated or collected by the Subscription Service in connection with the access and use of the Subscription Service by Customer or any information or data that identifies or describes the operation or performance of the Customer.

1.4 "**Customer Marks**" means and any trademarks, service marks, or trade names that Customer may designate from time-to-time

1.5 "**Days**" means calendar days.

1.6 "**Documentation**" means the documents, agreements, user manuals and any technical publications and specifications, as applicable, made generally available by Company to Customers relating to the operation and use of the Subscription Service.

1.7 "**End User**" means the Customer's user(s) who are authorized by the Customer and Company to use the Subscription Service.

1.8 "**End User Data**" means information or data that (i) is provided by Customer or an End User, or compiled, generated or collected by Customer or the Company in connection with the Subscription Service, and (ii) that identifies the End User individually, or that when compared to or otherwise combined or processed with other information enables an individual End User to be identified. "End User Data" includes, without limitation, user name or ID, account number, user profile or preferences, mailing address, email address, IP address, landline or cellular telephone numbers, and date of birth.

1.9 "**Intellectual Property Rights**" means all intellectual property rights, howsoever arising and in whatever media, whether or not registered, including patents, copyrights, trademarks, service marks, trade names, design rights, database rights, and any applications for the protection or registration of such rights and all renewals, and extensions thereof throughout the world.

1.10 "**Student Data**" means any End User Data that is directly related to an identifiable current or former student, or personally identifies a current or former student, that is maintained by a school, school district, or related entity or organization, or by Customer or Company. To the extent U.S. law applies, Student Data may include "educational records" as defined by the Family Educational Rights and Privacy Act ("**FERPA**"), 20 U.S.C. § 1232(g).

1.11 "**Subscription Service**" means the platform described in Exhibit A (Fees and

Pricing) hosted by Company or its agents and made generally available for remote access and use by Customer and Customer's End Users under this Agreement.

1.12 "**Usage Data**" means information or data other than End User Data (that describes the operation of the Subscription Service or use of Subscription Service by Customer or Customer's End Users, including but not limited to the number of End Users served, the volumes or types of Content stored, downloaded or used, the patterns or frequency of such use, use by geographic area or other similar analytical breakdown, financial information, network configurations, characteristics or capacity, performance metrics, test results, trouble reports and customer service information.

2. SUBSCRIPTION SERVICE LICENSE AND RESTRICTIONS

2.1 *License to Subscription Service.* Subject to the terms and conditions of this Agreement and the payment of all applicable Fees, Company hereby grants Customer a limited, non-transferable, non-sublicensable, non-exclusive license, during the Term, to use the Subscription Service solely for Customer's internal business purposes.

2.2 *CUSTOMER OBLIGATIONS.* In order to facilitate the provision of the Subscription Service, and depending on products and solutions licensed, Customer will provide Capture with (and keep updated as needed): a key contact person; access to their Search Service account; institutional data regarding inquiry, applicant, accepted applicant and deposited student matriculation patterns; weekly prospect pool data updates. Customer shall create and display its Privacy Policy on its website; Customer shall have capacity to add tracking code to its website; Customer shall timely provide usable marketing collateral, specifically images, for Capture's use in marketing campaign design and deployment.

2.3 *Limitations on License.* Customer shall not: (a) modify or make derivative works based on the Subscription Service; (b) use the Subscription Service other than as permitted under this Agreement; (c) remove any product identification or other notices contained in the Subscription Service; or (d) reverse engineer the Subscription Service for any reason or access the Subscription Service to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions, or graphics of the Subscription Service, or (iii) copy any ideas, features, functions, or graphics of the Subscription Service.

2.4 *Unauthorized Access.* Customer shall promptly notify Company of any unauthorized use, copying, or disclosure of the Subscription Service of which it becomes aware and further agrees to take such commercially reasonable measures necessary to end and prevent any such further use, copying, and disclosure.

2.5 *Breach of License.* Company, in its sole and exclusive discretion, may immediately terminate this Agreement in the event Customer, or any of Customer's End Users, violate the license grants made herein or any provision of this Section 2 (Subscription Service License and Restrictions). Each Party acknowledges and agrees that any breach of license grants made herein or any provision of this Section 2 (Subscription Service License and Restrictions) by Customer or its End Users, shall cause immediate and irreparable injury to Company, and in the event of such breach, Company shall be entitled to seek and obtain injunctive relief, without bond or other security, and all other remedies available at law and in equity.

3. PROFESSIONAL SERVICES

3.1 *Professional Services.* Any project management, sales support, integration, deployment, knowledge and best practice advice or other consultancy, support and maintenance services related to the adoption or deployment of the Subscription Service ("**Professional Services**"), will be specified in an Initial SOW attached as Exhibit B hereto and incorporated herein.

3.2 *Customer Personnel, Facilities and Resources.* Customer will provide Company with timely access to appropriate Customer personnel and will arrange for Company personnel to have suitable and safe access to Customer's facilities and applicable systems. Customer will also provide suitable office space and associated resources for Company personnel working on-site, including all necessary computing and office support resources, and will undertake any other responsibilities described in the applicable SOW. The SOW may also specify tasks or activities for which Customer is responsible and, if applicable, those tasks or activities that will be performed jointly by Customer and Company.

3.3 *Approvals and Information.* Customer will respond promptly to any request by Company for information, approvals, decisions or authorizations that

are needed by Company to perform the Professional Services. Company may also describe the course of action Company intends to follow if it does not receive a timely response from Customer, which may include suspension of the affected Professional Services. Company may follow the described course of action in the absence of a timely response from Customer. Any subsequent change requested will be subject to mutual agreement and may result in a Change Order.

3.4 Changes to SOW's. Either party may propose changes to the Professional Services under an applicable SOW. Requests for changes will be submitted to the other party in writing for consideration of feasibility and the likely effect on the fees and the Professional Services. The parties will document any agreed upon changes in mutually executed Change Orders.

3.5 Proceeding on Oral Instructions. Company may proceed with and be compensated for performing changed work for a period of up to thirty (30) calendar days if Company receives an oral instruction to proceed from Customer's authorized representation and Company sends a written confirmation of the oral instruction to Customer.

3.6 Customer Delays. If action or inaction by Customer, or its suppliers' failure to perform their responsibilities in a timely manner, delays or prevents Company from performing the Professional Services, Company will be entitled to a Change Order documenting an equitable adjustment in the schedule for performance and the fees under the applicable SOW.

4. INTELLECTUAL PROPERTY

4.1 Protection of Proprietary Rights. Customer acknowledges and agrees that the Subscription Service is a commercially valuable asset of Company, the development of which required the investment of substantial time, effort, and cost by Company. Customer further acknowledges and agrees that the Subscription Service contains trade secrets of Company and that it is Company's Confidential Information and is proprietary to Company. Accordingly, Customer hereby agrees that it and its End Users will use the highest degree of care to maintain the confidentiality of the Subscription Service. Customer and its End Users shall comply with the obligations in Section 2 (Subscription Service License and Restrictions) including (and without limiting the generality of the foregoing) limiting the use of and access to the Subscription Service only to Customer's End Users.

4.2 Subscription Service Ownership. As between Customer and Company, Company owns all rights, title and interest in and to the Subscription Service and to all output and executables of the Subscription Service. Except for the license granted in Section 2.1, this Agreement does not grant Customer any right, title, or interest in any intellectual property owned or licensed by Company, including Subscription Service. Customer agrees to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices and restrictions contained in this Agreement.

4.3 Data Ownership. As between Customer and Company, Customer owns all right, title, and interest, including copyright and other proprietary rights, in Customer Data, End User Data and Student Data, whether collected by Customer or Company. As between Customer and Company, the Company owns all right, title, and interest, including copyright and other proprietary rights, in Company Data and Usage Data, whether collected by Customer or the Company.

4.4 Customer Data and End User Data License. Customer grants to Company a limited, nonexclusive, non-transferable, fully paid-up, royalty-free license to Customer Data, End User Data and Student Data to copy, store, display and use for purposes of providing Company and End Users access and use of Subscription Service. Customer grants to Company a worldwide, perpetual nonexclusive, fully paid-up and royalty-free license to Customer Data, End User Data and Student Data to copy, store, display, use, collect and aggregate such Customer Data, End User Data and Student Data to extent that Customer Data, End User Data and Student Data, alone or in the aggregate, does not individually identify a specific End User or student or otherwise Company has processed Customer Data, End User Data and Student Data to de-identify any individual End User or student.

4.5 Student Data Access. To the extent necessary to provide Customer access and use of the Subscription Service to the extent using Student Data, Customer authorizes Company to access or collect Student Data and shall facilitate a reasonable method for Company to obtain such information, for example records stored in Customer's student information systems, or collect data and Student Data through other secure transfer methods. In the US, Company shall access, collect and process Student Data as an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1). Customer agrees that, as between the Customer and Company, Customer is solely responsible for all Student Data, whether provided by Customer, students, or any other third-party. Customer represents and warrants that Customer has the authority to provide Student Data to Company, and that Customer has provided appropriate disclosures to all Customer's students regarding Customer's sharing of Student Data with Company

and has otherwise complied with any disclosure requirements pursuant to FERPA and other applicable law.

4.6 Third-Party Access and Remote Access to Student Data. Customer consents to allow Company to provide access to Student Data to Company employees and to certain third-party service providers which have a legitimate need to access such data in order to provide their services to Company as part of Company's provision of the Subscription Service to Customer. Customer also acknowledges that, subject to the terms of this Agreement and to the extent permitted by Law, Student Data may be accessed and processed by Company support or (if applicable) managed and cloud hosting personnel in foreign countries, including countries other than the jurisdiction from which the Student Data was collected, and Customer hereby authorizes such access and processing. In the United States, Company accesses, collects and processes Student Data as an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1). If explicitly authorized by Customer or End User, Customer consents to allow Company to provide access to Student Data to third parties that Company designates through the provision of Subscription Service under this Agreement. Customer acknowledges that Company is not responsible for the data practices of third parties with whom the Customer elects to share Student Data, and that, as between Customer and Company, Customer is solely responsible for the consequences of providing or transmitting Student Data to such third parties, or authorizing those third parties to access Student Data through the Subscription Service.

4.7 California Consumer Privacy Act. To the extent Company receives End User Data containing personal information (as that term is defined by the California Consumer Privacy Act, as amended by the California Privacy Rights Act ("CCPA")) from Customer pursuant to this Agreement, the Parties acknowledge and agree that Company is a service provider and receives such personal information for a business purpose. The Parties agree to comply with the applicable provisions of the CCPA with respect to the collection, transmission, and processing of such personal information (as defined by the CCPA) exchanged or shared pursuant to the Agreement. Company shall not sell any such personal information in violation of CCPA. Company shall limit its retention, use, and disclosure of such personal information provided by Customer pursuant to this Agreement as necessary for purposes of providing the Subscription Service and any Professional Services pursuant to this Agreement or as permitted by the CCPA. The terms "personal information," "service provider," "sale," and "sell" are as defined in Section 1798.140 of the CCPA. Company certifies that it understands the restrictions of this Section 4.7. It is Customer's sole responsibility to notify Company of any requests from consumers (as defined in the CCPA) seeking to exercise rights afforded in the CCPA with regard to personal information received or processed in connection with the Subscription Service. Company agrees to provide reasonable cooperation to Customer in connection with such requests.

4.8 Student Data Requests; Retention and Deletion Requests. Customer may request that Company delete or retrieve Student Data in Company's possession at any time by providing such a request in writing, which request Company shall then comply with in a commercially reasonable time not to exceed two (2) weeks unless a shorter time is required by law. Company will otherwise delete Student Data within the time periods required by law, and at a minimum, other than ordinary course backups, within a commercially reasonable time following the end of the term of the Agreement. It is Customer's sole responsibility to notify Company of any requests from individuals to exercise rights afforded under applicable law with respect to the modification, deletion, restriction and/or access to End User Data or Student Data received or processed in connection with the Subscription Service. Company agrees to provide reasonable cooperation to Customer in connection with such requests. Customer represents and warrants that any processing of End User Data or Student Data in accordance with its instructions is lawful.

4.9 License to Customer Trademarks. Customer hereby grants to Company a limited, non-transferable, non-sublicensable, non-exclusive license, during the Term, to use, reproduce, display, and distribute the Customer Marks in connection the Subscription Service to Customer and its End Users, subject to the terms of this Agreement. Customer further grants Company the right to display the Customer Marks on its Website and marketing materials. Company shall comply with Customer's then-current policies regarding the use of Customer's Marks. Company acknowledges and agrees that all Intellectual Property Rights in the Customer Marks belong to and shall continue to belong to Customer (or its licensors or other third-party owners), and Company shall have no rights in or to the Customer Marks other than as specifically set forth in this Agreement.

5. FEES AND PAYMENT

5.1 Subscription Service Fees. The pricing and fees for the Subscription Service are forth in Exhibit A (Fees and Pricing) (the "**Fees**") and will be invoiced in

accordance with the provisions set forth therein. Company reserves the right to change the Fees upon thirty (30) Days prior written notice to Customer.

5.2 *Payment Terms.* All amounts to be paid by Customer hereunder shall be due and payable thirty (30) Days after Customer's receipt of the invoice therefor. All payments not made by Customer when due shall be subject to late charges of the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount or (b) the maximum amount permitted under applicable law. Any failure to pay will constitute a material breach of this Agreement by Customer.

5.3 *Taxes.* Customer shall pay all sales, use and excise taxes relating to, or under, this Agreement, exclusive of taxes based on or measured by Company's net income, unless Customer is exempt from the payment of such taxes and provides Company with sufficient evidence of such exemption.

5.4 *Suspension.* Without limiting Company's termination rights, Company shall have the right to suspend the Subscription Service in the event Customer fails to pay any Fees when due.

6. CONFIDENTIALITY

6.1 *Confidentiality Obligations.* The Parties agree to hold each other's Confidential Information in strict confidence. The Parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than as specified in this Agreement. Each Party agrees to take all reasonable steps to ensure that Confidential Information of either Party is not disclosed or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. Each Party's Confidential Information shall remain the sole and exclusive property of that Party. Each Party acknowledges that any use or disclosure of the other Party's Confidential Information other than as specifically provided for in this Agreement may result in irreparable injury and damage to the non-using or non-disclosing party. Accordingly, each Party hereby agrees that, in the event of use or disclosure by the other Party other than as specifically provided for in this Agreement, the non-using or non-disclosing Party may be entitled to equitable relief as granted by any appropriate judicial body.

6.2 *Duration.* The obligations under this Section 6 (Confidentiality) shall terminate five (5) years following expiration or termination of this Agreement (except with regard to trade secrets, which shall remain confidential for so long as the information remains protected as a trade secret).

6.3 *Feedback.* Customer and/or its End Users may provide suggestions, comments or other feedback to Company with respect to the products and services, including the Subscription Service. Feedback is voluntary and Company is not required to hold it in confidence. Feedback may be used by Company for any purpose without obligation of any kind. Nothing contained herein shall preclude either Party from developing any products or services or enhancing any existing products or services, including but not limited to the products that are the subject of this Agreement, provided any such developments or enhancements are not based on or derived from the other party's intellectual property or Confidential Information.

6.4 *FERPA.* Company shall comply, as though it were Customer, with all of the requirements of the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. §1232g) and the regulations adopted thereunder (34 C.F.R. §99) that address disclosures to third parties of student information, and other local, state or federal laws regulating the use and dissemination of Customer's constituent information. Customer appoints Company as a "School Official" as that term is used in Title 34, Code of Federal Regulations, §§99.7(a)(3)(iii) and 99.31(a)(1), for purposes of responding to requests that come to it for "education records" as that term is defined under 20 U.S.C. §1232g (a)(4), with respect to course enrollments and other information needed to provide Content to students. Customer has determined that Company has a "legitimate educational interest" in responding to such requests, as that phrase is used in the previously cited regulations.

6.5 *Security.* Company will implement reasonable physical, administrative and technical security measures for the Subscription Service designed to: (a) protect the security and confidentiality of the Customer and End User Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Subscription Service and Customer End User Data, and (c) protect against unauthorized use of or access to the Subscription Service and Customer and End User Data. Company shall also establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Subscription Service and the Customer and End User Data stored therein. With respect to any Student Data, Company's security policies and practices are FERPA compliant and Company certifies that it will not make or permit unauthorized use of any information systems or records containing such Student Data, including: change, delete or add data to any information systems or files outside the scope of designated responsibilities.

7. TERM AND TERMINATION

7.1 *Term.* The initial term of this Agreement shall commence on the Effective Date and shall continue as mutually agreed upon in Exhibit A. Upon expiration of the Initial Term, this Agreement may be renewed for successive twelve (12) month terms (each a "**Renewal Term**") by mutual consent of the Parties") unless otherwise mutually agreed to in Exhibit A. The Initial Term and any Renewal Terms are referred to herein collectively as the "**Term**."

7.2 *Termination for Breach.* Either Party may terminate this Agreement with thirty (30) Days prior written notice if the other Party has failed to comply with any material term, condition, or obligation of this Agreement, and such Party subsequently has failed to remedy the default within thirty (30) Days after such notice by the non-defaulting Party.

7.3 *Termination for Insolvency.* If Company believes in good faith that Customer's ability to make payments may be impaired, or if Customer fails to pay any invoice when due and does not make such payment within ten (10) Days after receipt of notice from Company of such failure, then Company may, in its sole discretion, either: (a) suspend the Subscription Service until such payment is made; or (b) terminate the Subscription Service; or (c) Termination for Convenience. Either Party may terminate this Agreement without cause and without penalty at any time given thirty (30) days prior written notice to the other Party.

7.4 *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, all sums owed to Company by Customer will become immediately due and payable upon the effective date of termination, and each Party shall immediately cease use of all Confidential Information belonging to the other Party and shall irretrievably delete and/or remove such items from all computer hardware and storage media, including backups. Additionally, following termination of this Agreement, Customer shall immediately cease use of the Subscription Service.

7.5 *Survival.* Notwithstanding any provisions contained in this Agreement to the contrary, in addition to any provisions that by their express terms survive expiration and termination of this Agreement, or by their nature may be reasonably inferred to have been intended to survive expiration and termination of this Agreement, the following provisions shall survive expiration and termination of this Agreement: 1 (Definitions), 4.1 (Intellectual Property), 6 (Confidentiality), 7.4 (Effect of Termination), 7.5 (Survival), 9 (Limitation of Liability) and 10 (General).

8. WARRANTIES

8.1 *Limited Warranty.* Each Party represents and warrants that (a) it has the authority to enter into this Agreement and to grant the rights and licenses provided herein, and that by entering into this Agreement such Party is not in violation of any previous agreement between such Party and any third party, and (b) it will comply with all laws and regulations applicable to the obligations assumed under this Agreement.

8.2 *No Other Warranties.* EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 8 (WARRANTIES), Company DOES NOT MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBSCRIPTION SERVICE (INCLUDING ANY WARRANTY AS TO TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE), NOR WITH RESPECT TO ANY OTHER MATTER SET FORTH IN THIS AGREEMENT.

9. LIMITATION OF LIABILITY

9.1 *Disclaimer of Consequential Damages.* NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR SPECIAL DAMAGES OR COSTS (INCLUDING LOST PROFITS, LOST REVENUES, LOST DATA, COSTS OF RECREATING LOST DATA, OR LOSS OF USE) RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE (INCLUDING STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, EVEN IF EITHER OR BOTH OF THEM KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF.

9.2 *Cap on Direct Damages.* NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES AND ROYALTIES PAID BY CUSTOMER TO Company IN THE TWELVE (12) FULL CALENDAR MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED.

9.3 *Exclusions.* NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE LIMITATIONS UPON THE TYPES AND AMOUNTS OF EACH PARTY'S LIABILITY, AND THE EXCLUSIONS OF CERTAIN TYPES OF DAMAGES, SET FORTH IN SECTION 9 (LIMITATION OF LIABILITY), SHALL NOT APPLY TO THE FOLLOWING: (A) DAMAGES RESULTING FROM CUSTOMER'S BREACH OF SECTION 2 (LICENSE GRANTS AND RESTRICTIONS); (B) DAMAGES RESULTING FROM A BREACH OF SECTION 6 (CONFIDENTIALITY); OR (C) CLAIMS SUBJECT TO OR AMOUNTS PAYABLE PURSUANT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER.

9.4 *Compliance with Laws and Export.* In connection with Customer's access to and use of the Subscription Service, Customer and Company are responsible for complying with all laws, regulations and policies of all relevant jurisdictions.

10. GENERAL

10.1 *Nature of Relationship.* In entering this Agreement, Customer does so as an independent party and not as an agent, partner, or joint venturer of Company. Customer does not have any right or authority, nor shall Customer hold itself out as having any right or authority, to assume, create, or enter into any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon, Company.

10.2 *Non-solicitation.* During the term of this Agreement and each SOW and for twelve (12) months after their respective expiration or termination, neither party will, either directly or indirectly, solicit for employment or employ (except as permitted below) by itself any employee of the other party who was involved in the performance of the party's obligations, unless the hiring party obtains the written consent of the other party. The foregoing provision will not prohibit a general solicitation of employment in the ordinary course of business or prevent either party from employing any employee who contacts such party as a result of such a general solicitation or at his or her own initiative without any direct or indirect solicitation by or encouragement from such party.

10.3 *Press Release.* Each Party will have the right to issue a press release about the relationship between the Parties with the other Party's prior written approval (which shall not be unreasonably withheld or delayed).

10.4 *Compliance with Laws.* The Parties shall comply with all applicable local, state, and federal laws and regulations, including all export laws and regulations of the United States.

10.5 *Construction.* The section headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."

10.6 *Inapplicability of UCITA.* THE PARTIES AGREE THAT NO PROVISION OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA) IS INTENDED TO APPLY TO THE INTERPRETATIONS OF THIS AGREEMENT, WHETHER OR NOT UCITA IS ENACTED IN THE LEGAL JURISDICTION WHOSE LAW GOVERNS THIS AGREEMENT AS SET FORTH IN THIS AGREEMENT.

10.7 INSURANCE.

During the term of this Agreement, CAPTURE and any respective subcontractor will maintain, at its sole expense, the following insurance coverages:

A comprehensive general liability policy with a limit of at least \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, including coverage for personal injury liability; Workers' compensation coverage in accordance with statutory requirements, covering the activities of Company in connection with services performed; Comprehensive automobile policy, including the operation of any owned, hired, and non-owned automobile, covering bodily injury and physical damage with a combined single limit of at least \$1,000,000.00; An umbrella liability policy with a limit of at least \$3,000,000.00 per occurrence; A professional Liability with a limit of at least \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate. Customer shall be notified no less than thirty (30)

days in advance of the cancellation or expiration of the policy. All insurance coverage listed above shall remain in force for the term of the Agreement.

Customer has the right to request annual, certificates evidencing such insurance policies.

10.8 *Governing Law; Venue; Severability.* This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and constructed in accordance with the law of the state in which Customer is primarily headquartered. In the event that one or more of the provisions herein shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforcement of the remaining provisions shall not be affected or impaired.

10.9 *Assignment.* Customer shall not assign this Agreement or any rights or obligations hereunder, without the express written consent of Company save as described in the agreement. Any assignment or transfer in violation of the foregoing will be null and void. Company reserves the right to assign this Agreement to any affiliate or any entity in connection with the sale, combination, or transfer of all or substantially all of the assets or capital stock or from any other corporate form of reorganization by or of Company. Subject to all of the terms and conditions hereof, this Agreement inures to the benefit of and is binding upon the Parties hereto and their successors and assigns.

10.10 *Waiver.* The failure to enforce or the waiver by either Party of one default or breach of the other Party shall not be considered to be a waiver of any subsequent default or breach.

10.11 *Notices.* All notices required or permitted hereunder shall be in writing, delivered personally, by facsimile, by certified or registered mail, or by nationally recognized overnight courier (e.g., FedEx) at the Parties respective addresses set forth in the signature lines to this Agreement. All notices shall be deemed effective upon personal delivery; or on the business day following receipt by telephonic facsimile; or when received if sent by certified or registered mail or by overnight courier. Email delivery of notices are also permitted.

10.12 *Force Majeure.* Except with regard to payment obligations, either Party shall be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party, including, but not limited to, default of subcontractors or suppliers, failures of third party software, default of third party vendors, acts of God or of the public enemy, U.S. or foreign governmental actions, labor shortages or strikes, communications or utility interruption or failure, fire, flood, epidemic, and freight embargoes. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

10.13 *Remedy.* The rights and remedies of the Parties will be cumulative (and not alternative). In the event of any litigation between the Parties relating to this Agreement, the prevailing Party will be entitled to recover its reasonable attorneys' fees, expert witness fees, and court costs from the other Party.

10.14 *Entire Agreement.* This Agreement, and each exhibit hereto, together constitute the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written and oral agreements with respect to the subject matter. No modification of this Agreement shall be binding on either Party unless it is in writing and signed by both Parties. In the event of any conflict or inconsistency between this Agreement and any exhibit, the terms and conditions of this Agreement shall prevail.

10.15 *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original and all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized officers as of the day and year below.

CAPTURE, LLC



Signature

Jim Lintner

Printed Name

Chief Financial Officer

Title

Aug 10, 2022

Date

jlintner@capturehighered.com

Email Address

Jim Lintner, CFO

Company's Primary Contact

CUSTOMER



Signature

Michelle Pickham

Printed Name

Senior Contract Officer

Title

Aug 10, 2022

Date

mmiller8@umw.edu

Email Address

Melissa Yakabouski <myak@umw.edu>

Customer's Primary Contact

Exhibit A: UNIVERSITY OF MARY WASHINGTON
Fees and Pricing

This Capture Higher Ed Order Form ("Order Form" or "OF") by and between Capture Higher Ed and the Customer named above ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form shall become effective on the Effective Date. This Order Form, together with the Capture Higher Ed Master License and Services Agreement and any Statements of Work ("SOW") and/or Exhibits or Addenda form the entire agreement between the parties in respect of the products and services set forth in the Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Capture Higher Ed to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Capture Higher Ed Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Capture Higher Ed, as applicable.

	Term 1 (\$)	Term 2 (\$)	Total Term Fees (\$)
Behavioral Intelligence Platform	66,759	73,435	140,194
Digital Display Advertising – HHIP Targeting	6,822	7,300	14,122
Capture Price Adjustment	(8,315)	(10,901)	(19,216)
Annual Fees:	\$65,266	\$69,834	\$135,100

1. Notes and Additional Terms

Permitted Users	Unlimited Users defined by institution and traditionally members of enrollment or advancement staff.												
Contract Term	Term 1: 12/17/2022 – 11/30/2023 Term 2: 12/1/2023 – 11/30/2024 This Master License and Services Agreement piggybacks on the Virginia Commonwealth University current contract C0001052.												
Payment Terms	Customer shall pay to Company the Total Fees for this OF as follows: <table><tr><th>Due Date</th><th>Amount</th></tr><tr><td>1/30/2023</td><td>\$32,633</td></tr><tr><td>7/30/2023</td><td>\$32,633</td></tr><tr><td>1/30/2024</td><td>\$34,917</td></tr><tr><td>7/30/2024</td><td>\$34,917</td></tr><tr><td>TOTAL Fees:</td><td>\$135,100</td></tr></table> 1. All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency. 2. Client shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.	Due Date	Amount	1/30/2023	\$32,633	7/30/2023	\$32,633	1/30/2024	\$34,917	7/30/2024	\$34,917	TOTAL Fees:	\$135,100
Due Date	Amount												
1/30/2023	\$32,633												
7/30/2023	\$32,633												
1/30/2024	\$34,917												
7/30/2024	\$34,917												
TOTAL Fees:	\$135,100												

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Order Form to be executed by their duly authorized officers as of the day and year below.

CAPTURE, LLC



 Signature
Jim Lintner

 Printed Name
 Chief Financial Officer

 Title
 Aug 10, 2022

 Date
 jlintner@capturehighered.com

 Email Address
 Jim Lintner, CFO

 Company's Primary Contact

CUSTOMER



 Signature
Michelle Pickham

 Printed Name
 Senior Contract Officer

 Title
 Aug 10, 2022

 Date
 mmiller8@umw.edu

 Email Address
 Melissa Yakabouski <myak@umw.edu>

 Customer's Primary Contact

Exhibit B
Initial Statement of Work (SOW)

This Exhibit B to the Master License and Services Agreement entered into by “Capture” and “Customer” as of the “Effective Date” sets forth more specifically obligations of the parties. All capitalized terms used but not defined in this Exhibit shall have the meanings set forth in that Master License and Services Agreement.

1) DIGITAL DISPLAY ADVERTISING – HOUSEHOLD IP TARGETING

- a) Household IP advertising consists of digital advertising that can be displayed throughout the web. HHIP uses a list of street addresses to serve banner ads at specific households on any device linked to that household's IP address
- b) Includes one (1) 3-month campaign up to 2,500 student records – each campaign includes six (6) static ads with consistent branding, messaging, design, and call-to-action. Sizes include: 160x600, 300x600, 300x250, 320x50, 728x90, 970x250
- c) One (1) pre-flight branding & design consultation with Client Success Manager (CSM), Designer and three (3) pre-flight rounds of revisions
- d) Post-flight date administration and optimization
 - i) Optimization to the best of our ability to meet or exceed Capture’s performance metrics
 - ii) Monthly CPM meeting to cover click-thru-rate, impression volume, and optimization tactics
- e) Post campaign performance summary reporting within Capture’s platform.

2) BEHAVIORAL INTELLIGENCE PLATFORM

- a) Capture grants access to Partner access to the following components of the Behavioral Intelligence Platform: ENGAGE, APPLY, AID and ENROLL.
- b) Partner will provide login credentials to those individuals it wishes to have access to the Behavioral Intelligence Platform, and will have sole responsibility for all interactions between the Behavioral Intelligence Platform and individuals accessing the platform.
- c) **ENGAGE**
 - i) Capture grants to Partner a non-transferrable, non-exclusive, non-sublicensable license, to incorporate code provided by Capture which gathers and sends Capture information on website visitors (the “Engage Tracking Code”) into pages of Partner’s website accessible at (the “Partner .edu Site”) for the following populations: Undergraduate Freshmen
 - ii) Capture will use data gathered with the Engage Tracking Code to:
 - (1) generate and provide Partner with analytics on engagement of both identified and anonymous visitors to the Partner .edu Site, including connecting identified visitors’ prior anonymous visits to provide a history of engagement on the Partner .edu Site; and
 - (2) provide Partner recommendations and on creating and executing dynamic messaging on the Partner .edu Site for both anonymous and known visitors based on their behavior and their status in the admissions process.
 - iii) Capture will provide Partner access to Student Data by providing:
 - (1) selected analytics regarding visits to the Partner .edu Site as exportable files; and
 - (2) Partner with login information which can be used to access a web application (the “Behavior Intelligence Platform”) to track user visit history to the Partner .edu Site as reflected in the data gathered using the Engage Tracking Code. The Behavioral Intelligence Platform will provide information including visits, pages visited and time spent on pages into which the Engage Tracking Code has been incorporated, and will also allow either Partner or Capture to modify which pages of the Partner .edu Site are tracked or how those pages are tagged.
 - iv) Capture will provide design and copywriting for a total of 20 dynamic content campaign allocations.
 - v) Capture will provide unlimited form tracking, unlimited site tracking and an unlimited number of pages tracking.
 - vi) Capture will facilitate use of the Engage Tracking Code into the Partner .edu Site by:
 - (1) suggesting pages in the Partner .edu Site into which the Engage Tracking Code could be incorporated;
 - (2) if requested by Partner, tagging specific pages into which the Engage Tracking Code has been incorporated using the Behavioral Intelligence Platform; and
 - (3) using commercially reasonable efforts to troubleshoot, with assistance from Partner, problems with tracking of pages from the Partner .edu Site.
 - vii) Engage Obligations
 - viii) Partner will provide Capture with a key contact with access to map and tag pages in the Partner .edu Site with the Engage Tracking Code, and will be responsible for incorporating the Engage Tracking Code into the Partner .edu Site.
- d) **APPLY**
 - i) SFTP Data Exchange – A dedicated server space that allows for simple, secure file transfers at AES 256-bit encryption.

- ii) Model Accuracy Report – This transparent analysis shows how well your model performed on out-of-sample data.
 - iii) Model Re-specifications – Up to two in-cycle model re-specifications. If new data points become available mid-cycle, we will re-specify your model to optimize accuracy.
 - iv) Model Outputs and Scores – Real-time dashboard and raw data file including record level applicant outcomes.
 - v) Iterations – daily. Rapid recalculation of applicant decile rankings.
- e) AID and ENROLL**
- i) SFTP Data Exchange – A dedicated server space that allows for simple, secure file transfers at AES 256-bit encryption.
 - ii) TrafficLight Report – A report describing your data’s cleanliness and usability on seven different measures: completeness, consistency, conformity, accuracy, integrity, timeliness, and leakage.
 - iii) TrafficLight Data Cleanliness Consultation – Ensures that your model is as accurate as possible by verifying category counts and discussing anomalies.
 - iv) Model Accuracy Report – This transparent analysis shows how well your model performed on out-of-sample data.
 - v) Model Re-specifications – Up to two in-cycle model re-specifications. If new data points become available mid-cycle, we will re-specify your model to optimize accuracy.
 - vi) Model Outputs, Scores, Group-Level Predictions – Real-time dashboard and raw data file including raw data file including record level Enrollment probabilities and Discount Aid recommendation.
 - vii) Iterations – 15.

UNIVERSITY OF MARY WASHINGTON
Hosted Technology Services Addendum

VENDOR NAME: Capture, LLC

VENDOR PRODUCT/SOLUTION: Marketing Automation

This Addendum shall be included in any procurement deemed necessary requiring hosted technology services for the purpose of ensuring that the Commonwealth of Virginia and University of Mary Washington, technology standards are complied with for the duration of the agreement between the University and the Vendor.

Definitions:

- Agreement: The “Agreement” includes the contract, this addendum and any additional addenda and attachments to the contract, including the Contractor’s Form.
- University: “University” or “the University” means University of Mary Washington, its trustees, officers and employees. The point of contact for the University is the contract administrator for this Agreement.
- University Data: “University Data” is defined as any data that the Vendor creates, obtains, accesses, transmits, maintains, uses, processes, stores or disposes of in performance of the Agreement. It includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites.
- Personally Identifiable Information: “Personally Identifiable Information” (PII) includes but is not limited to: Any information that directly relates to an individual and is reasonably likely to enable identification of that individual or information that is defined as PII and subject to protection by University of Mary Washington under federal or Commonwealth of Virginia law.
- Security Breach: “Security Breach” means a security-relevant event in which the security of a system or procedure involving University Data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
- Service(s): “Service” or “Services” means any goods or services acquired by the University from the Vendor.

1. **Rights and License in and to University Data**: The parties agree that as between them, all rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use these data as provided in this Agreement solely for the purpose of performing its obligations hereunder.
2. **Accessibility**: All e-learning and information technology developed, purchased, upgraded or renewed by or for the use of University of Mary Washington 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 most current version of the Web Content Accessibility Guidelines (WCAG). The Vendor/Contractor further warrants that it is committed, and shall remain committed, to promoting and improving accessibility of all its products.
 - a. If the Products and Services are not in conformance with all applicable federal and state disability laws, policies, and regulations as of the Contract Effective Date, as identified by the Vendor/Contractor, or through University testing or assessment, Vendor/Contractor shall use all reasonable efforts to update the Products and Services so as to be in conformance prior to Acceptance by the University.

- b. In the event any issues arise regarding Vendor's/Contractor's compliance with applicable federal or state disability laws, policies and regulations, at any time, during any term of the contract, including all optional renewals, the University may send communications to Vendor/Contractor as specified in the Notices provision of the contract, requesting cure of such noncompliance. The Vendor/Contractor shall respond to these communications within two (2) business days from receipt to the University official identified in the Notices provision of the contract, with a plan, including a timeline for completion, which will bring the contractor back within compliance as required by the contract. This plan shall require University agreement.

3. Data Privacy:

- a. Contractor will use University 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 the University, except as required by this Agreement or as otherwise required by law.
- b. University Data will not be stored outside the United States without prior written consent from the University.
- c. Contractor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill obligations under this Agreement. The Contractor will ensure that the Contractor's 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.
 - i. If the Contractor will have access to the records protected by the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in such records, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use such records only for the purpose of fulfilling its duties under this Agreement for University's and its End Users' 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 the University.

4. Data Security:

- a. Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor'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.
- b. Contractor will use industry-standards and up-to-date security controls, technologies and practices such as network firewalls, anti-virus, vulnerability scans, system logging, intrusion detection, 24x7 system monitoring and third-party penetration testing in providing services under this Agreement.
- c. Contractor will provide SOC 2 Type 2 reports, or other security report deemed sufficient by the University, prepared by a third-party auditor, to demonstrate the presence and efficacy of the security controls used to protect its products, services and environments where University Data are hosted, stored and processed. Updated security reports will be provided at no cost on an annual basis.
- d. Without limiting the foregoing, Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) and stored at AES 256 or stronger.

5. Data Authenticity, Integrity and Availability:

- a. Contractor will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. Contractor shall be responsible for ensuring that University Data, per the Virginia Public Records Act, "is preserved, maintained, and accessible throughout their lifecycle, including 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. Contractor will ensure backups are successfully completed at the agreed interval and that restoration capability is maintained for restoration to a point-in-time and/or to the most current backup available.
- c. Contractor will maintain an uptime of 99.99% or greater, or as negotiated and accepted by the University, as agreed to for the contracted services via the use of appropriate redundancy, continuity of operations and disaster recovery planning and implementations, excluding regularly scheduled maintenance time.

6. Employee Qualifications:

- a. Contractor shall ensure that its employees have undergone appropriate background screening and possess all needed qualifications to comply with the terms of this agreement including but not limited to all terms relating to data and intellectual property protection.

7. Security Breach:

- a. Response. Immediately (within one day) upon verifying a Security Breach, or of circumstances that could have resulted in unauthorized access to or disclosure or use of University Data, Contractor will notify the University, fully investigate the incident, and cooperate fully with the University’s investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.
- b. Liability. In addition to any other remedies available to the University under law or equity, when applicable to the type services being provided, Contractor will pay for or reimburse the University in full for all costs incurred by the University in investigation and remediation of such Security Breach, 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 Personally Identifiable Information 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. Contractor agrees to indemnify, hold harmless and defend the University from and against any and all claims, damages, or other harm related to such Security Breach.

8. Requests for Data, Response to Legal Orders or Demands for Data:

- a. Except as otherwise expressly prohibited by law, Contractor will:
 - i. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data;
 - ii. consult with the University regarding its response;
 - iii. cooperate with the University’s requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
 - iv. Upon the University’s request, provide the University with a copy of its response.
- b. Contractor will make itself and any employees, contractors, or agents assisting in the performance of its obligations under the Agreement, available to the University at no cost to the University based upon claimed violation of any laws relating to security and/or privacy of the data that arises out of this agreement. This shall include any data preservation or eDiscovery required by the University.
- c. The University may request and obtain access to University Data and related logs at any time for any reason and at no extra cost.

9. Data Transfer Upon Termination or Expiration:

- a. Contractor's obligations to protect University Data shall survive termination of this Agreement until all University Data has been returned or Securely Destroyed, meaning taking actions that render data written on media unrecoverable by both ordinary and extraordinary means.
- b. Upon termination or expiration of this Agreement, Contractor will ensure that all University Data are securely transferred, returned or destroyed as directed by the University in its sole discretion within 30 days of termination of this Agreement. Transfer/migration to the University or a third party designated by the University shall occur without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities, methods, and data formats that are accessible and compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during the transition.
- c. In the event that the University requests destruction of its data, Contractor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which Contractor might have transferred University data. Contractor agrees to provide documentation of data destruction to the University and to complete any required Commonwealth of Virginia documentation regarding the destruction of University Data.
- d. Contractor will notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to Contractor's facilities to remove and destroy University-owned assets and data. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. The Vendor 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 the University. Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

10. Audits:

- a. The University reserves the right in its sole discretion to perform audits of Contractor at no additional cost to the University to ensure compliance with the terms of this Agreement. Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
- b. If Contractor must under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data, Contractor will at its expense conduct or have conducted at least annually a(n):
 - i. American Institute of CPAs Service Organization Controls (SOC) Type II audit, or other security audit with audit objectives deemed sufficient by the University, which attests Contractor's security policies, procedures and controls;
 - ii. vulnerability scan, performed by a scanner approved by the University, of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Agreement; and
 - iii. formal penetration test, performed by a process and qualified personnel approved by the University, of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Agreement.
- c. Additionally, Contractor will provide the University 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.

11. Compliance:

- a. Contractor will comply with all applicable laws and industry standards in performing services under this Agreement. Any Contractor personnel visiting the University's facilities will comply with

all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to Contractor upon request.

- b. Contractor warrants that the service it will provide to the University is fully compliant with and will enable the University to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the University and/or Contractor, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA).

12. **No End User Agreements:** Any agreements or understandings, whether electronic, click through, verbal or in writing, between Contractor and University employees or other end users under this Agreement that conflict with the terms of this Agreement, including but not limited to this Addendum, shall not be valid or binding on the University or any such end users.

To the extent allowed by Virginia law, the University of Mary Washington will keep any information provided in a security audit report confidential to protect the integrity of the Vendor.

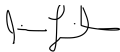
This Addendum and any other related and attached documents constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This Agency does not discriminate against faith-based organizations.

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

VENDOR

SIGNATURE: _____



PRINTED NAME: Jim Lintner

TITLE: CFO

DATE: Aug 10, 2022

AGENCY

University of Mary Washington

SIGNATURE: _____



PRINTED NAME: Michelle Pickham

TITLE: Senior Contract Officer

DATE: Aug 10, 2022