

CONTRACT MODIFICATION NO. 01
BETWEEN THE UNIVERSITY of MARY WASHINGTON and CAPTURE LLC
June 13, 2024

In accordance with the terms and conditions of the original Virginia Commonwealth University Contract, C0001052, (UMW Contract# COOP 23-1459) "Changes to the Contract," the following modifications have been mutually agreed upon, and will take effect on July 1, 2024.

Relative to the general scope of the above referenced contract, the University of Mary Washington hereby modifies the contract as follows:

1. Adding Products/Services:

- Behavioral Intelligence Platform* (*Product currently in use*)
- Search Consulting
- Email Marketing (Seniors and Juniors)
- Digital Advertising (Seniors and Juniors)* (*Single campaign currently running*)
- Landing Page

2. Change in Fees due to additional Products/Services:

Product Name	Year 1 (\$)	Opt-In Year 2 (\$)
Behavioral Intelligence Platform: Engage, Apply, Enroll	\$65,000	\$68,250
Search Consulting	\$13,600	\$14,280
Email Marketing – Senior Behavioral Email Series and AdHoc Email	\$46,369	\$48,688
Email Marketing – Junior Behavioral Email Series and AdHoc Email	\$22,463	\$23,586
Digital Advertising – Senior Enrollment Generation	\$95,550	\$100,328
Digital Advertising – Junior Inquiry Generation	\$39,820	\$41,811
Landing Page – Conversion Landing Page	\$1,000	\$1,050
Total Cost	\$283,802	\$297,993

Total Cost of Modification: \$581,795*

**Written approval of modification by Jeff McClurken, President's designee, on June 6, 2024.*

3. Change in Term Dates:

- Year 1: July 1, 2024 – June 30, 2025
- Opt-In Year 2: July 1, 2025 – June 30, 2026

4. Updated Payment Schedule: Payment shall be made according to the following schedule:

Due Date	Amount Due
Year 1: July 15, 2024	\$141,401
Year 1: December 15, 2024	\$141,401
Total Year 1	\$283,802
Opt-In Year 2: July 15, 2025	\$148,472
Opt-In Year 2: December 15, 2025	\$148,471
Total Opt-In Year 2	\$297,993

Signature Page Follows

All other terms and conditions of the original contract referenced above shall remain in force.

By signing this modification, representatives of each party are certifying authorization to sign and agree to be bound by the terms and conditions of the contract.

CONTRACTOR

Capture LLC

Signature: 

Name (Printed): Jim Lintner

Title: CFO

Email: jlintner@capturehighered.com

Phone: 5022426941

Date: 06/13/2024

AGENCY

University of Mary Washington

Signature: Melva A. H. Kishpaugh
Digitally signed by
Melva A. H. Kishpaugh
Date: 2024.06.13
14:44:46 -04'00'

Name (Printed): Melva A. H. Kishpaugh

Title: Director, Procurement Services

Date: June 13, 2024



MASTER LICENSE AND SERVICES AGREEMENT

This **SUBSCRIPTION AGREEMENT** (“**Agreement**”) is made and entered into as of June 13, 2024 (“**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. Exceptions to Confidentiality. The confidentiality obligations described

above shall not apply to Confidential Information to the extent that the Receiving Party receiving such Confidential Information can prove through written evidence that the Confidential Information (i) was lawfully received by the Receiving Party from a third party free of any obligation to keep it confidential; (ii) is or becomes publicly available, other than by breach of Receiving Party of its obligations to the Disclosing Party; (iii) is independently developed without any reference to the Confidential Information, as evidenced by contemporaneous written records of the Receiving Party; or (iv) is required to be disclosed by law, regulation or court order provided that with respect to any of the foregoing exceptions, to the extent permitted by applicable law or court process, the Receiving Party will give the Disclosing Party notice as soon as practicable prior to disclosure of Confidential Information that is claimed to be subject to an exception. Notice: The Receiving Party will notify the Disclosing Party as soon as practicable.

8. TERM AND TERMINATION

8.1 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."

8.2 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.

8.3 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. In either event, Customer shall remain liable to pay all Fees under this Agreement.

8.4 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.

8.5 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), 8.4 (Effect of Termination), 8.5 (Survival), 9 (Indemnification), 10 (Limitation of Liability) and 11 (General).

9. WARRANTIES

9.1 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.

9.2 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.

10. LIMITATION OF LIABILITY

10.1 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.

10.2 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.

10.3 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 10 (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.

10.4 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.

11. GENERAL

11.1 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.

11.2 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.

11.3 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).

11.4 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.

11.5 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."

11.6 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.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 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.

11.12 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.

11.13 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.

11.14 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 06/13/2024
Date
jlintner@capturehighered.com
Email Address
Jim Lintner, Chief Financial Officer
Company's Primary Contact

CUSTOMER

Digitally signed by
Melva A. H. Kishpaugh
Signature
Michelle Pickham
Printed Name
Senior Contract Officer
Date: 2024.06.13
14:58:53 -04'00'
Title
Date
Mmiller8@umw.edu
Email Address
Melissa Yakabouski, Dean of Admissions & Associate AVP
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 (\$)	Total Term Fees (\$)	Opt-in Term 2 (\$)
Behavioral Intelligence Platform: Engage, Apply, Enroll	65,000	65,000	68,250
Search Consulting	13,600	13,600	14,280
Email Marketing – Senior Behavioral Email Series and AdHoc Email	46,369	46,369	48,688
Email Marketing – Junior Behavioral Email Series and AdHoc Email	22,463	22,463	23,586
Digital Advertising – Senior Enrollment Generation	95,550	95,550	100,328
Digital Advertising – Junior Inquiry Generation	39,820	39,820	41,811
Landing Page – Conversion Landing Page	1,000	1,000	1,050
Annual Fees:	\$283,802	\$283,802	\$297,993

*For budgeting purposes, there will be an additional direct social media spend of up to \$7,500 per year.

1. Notes and Additional Terms

Permitted Users	Unlimited Users defined by institution and traditionally members of enrollment or marketing staff.	
Contract Term	Year 1: 7/1/2024 – 6/30/2025 Opt-in Year 2: 7/1/2025 – 6/30/2026	
Payment Terms	Customer shall pay to Company the Total Fees for this OF as follows:	
	Due Date	Amount
	7/15/2024	\$141,401
	12/15/2024	\$141,401
	TOTAL Fees:	\$283,802
	Opt-in Term 2: 7/15/2025	\$148,472
	Opt-in Term 2: 12/15/2025	\$148,471
	TOTAL Fees:	\$297,993
	- All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency. - Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form	

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

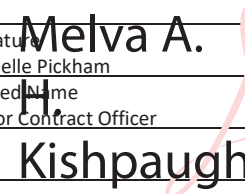
 Title 06/13/2024

 Date
 jlintner@capturehighered.com

 Email Address
 Jim Lintner, Chief Financial Officer

 Company's Primary Contact

CUSTOMER



 Digitally signed
 by Melva A. H.

 Signature
 Michelle Pickham

 Printed Name
 H. Kishpaugh

 Senior Contract Officer

 Title
 Date: 2024.06.13
 14:59:24 -04'00'

 Date
 Mmiller8@umw.edu

 Email Address
 Melissa Yakabouski, Dean of Admissions & Associate AVP

 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) BEHAVIORAL INTELLIGENCE PLATFORM

a) Include platform access for 1 population: First-Year

- b) Capture grants access to Customer access to the following components of the Behavioral Intelligence Platform: **ENGAGE, APPLY, and ENROLL**
- c) Customer 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.

d) ENGAGE

- i) Capture grants to Customer 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 Customer’s website accessible at (the “Customer .edu Site”) for included populations.
- ii) Capture will provide Customer access to Student Data by providing:
- (1) selected analytics regarding visits to the Customer .edu Site as exportable files; and
 - (2) Customer with login information which can be used to access the Behavioral Intelligence Platform to track user visit history to the Customer .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 Customer or Capture to modify which pages of the Customer .edu Site are tracked or how those pages are tagged.
- iii) Capture will provide unlimited form tracking, unlimited site tracking and an unlimited number of pages tracking.
- iv) Capture will facilitate use of the Engage Tracking Code into the Customer .edu Site by:
- (1) suggesting pages in the Customer .edu Site into which the Engage Tracking Code could be incorporated, including subdomains and related Customer-hosted domains such as athletics, CRM-created application domains, etc.;
 - (2) if requested by Customer, 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 Customer, problems with tracking of pages from the Customer .edu Site.
- v) Customer Obligations
- (1) Customer will provide Capture with a key contact with access to map and tag pages in the Customer .edu Site with the Engage Tracking Code, and will be responsible for incorporating the Engage Tracking Code into the Customer .edu Site.
- vi) Dynamic Content Campaigns:
- (1) Capture will provide design and copywriting for a total of **20 dynamic content campaign allocations**.
 - (2) Includes up to three (3) rounds of pre-launch revisions per campaign.
 - (3) Ongoing maintenance, with optimization to the best of our ability to meet or exceed Capture’s performance metrics.

e) APPLY (Freshman Only)

- 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.

f) ENROLL (First-Year Only)

- 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 record level Enrollment probabilities.
- vii) Up to 15 iterations. Iteration delivery required Customer to provide Capture with an updated data file.

2) SEARCH CONSULTING

- a) Historical analysis
- b) Parameter design – definition of initial name targeting structured by primary, secondary and expansionary markets
- c) Systematic name purchasing – creation of name purchasing schedule via primary data providers
- d) Customer agrees to answer questions related to the development of institution-specific student search content as well as financial aid questions essential to the delivery of student-specific scholarship and grant information.

3) DIGITAL ADVERTISING – JUNIOR 2026 INQUIRY GENERATION BUNDLE

- a) **Includes up to six (6) 3-month campaigns using a combination of digital advertising techniques as determined by Customer and Capture to promote brand awareness and funnel conversion.**
- b) Campaign Creation:
- i) Each campaign contains six (6) static ads with consistent branding, messaging, design, and call-to-action.
 - ii) Designated content writers and designers will use Customer brand guidelines to develop ad creative.
 - iii) Includes up to three (3) pre-launch rounds of revisions
- c) Ongoing maintenance and optimization to the best of our ability to meet or exceed Capture’s performance metrics
- Interactive web-based dashboard: Real-time data dashboard that presents key metrics such as click-through-rate, clicks, impressions, performance against industry benchmarks, enrollment funnel movement, conversions, and optimization tracking.

4) **DIGITAL ADVERTISING – SENIOR 2025 ENROLLMENT GENERATION BUNDLE**

- a) **Includes up to fifteen (15) 3-month campaigns using a combination of digital advertising techniques as determined by Customer and Capture to promote brand awareness and funnel conversion.**
- b) Campaign Creation:
 - i) Each campaign contains six (6) static ads with consistent branding, messaging, design, and call-to-action.
 - ii) Designated content writers and designers will use Customer brand guidelines to develop ad creative.
 - iii) Includes up to three (3) pre-launch rounds of revisions
- c) Ongoing maintenance and optimization to the best of our ability to meet or exceed Capture’s performance metrics
Interactive web-based dashboard: Real-time data dashboard that presents key metrics such as click-through-rate, clicks, impressions, performance against industry benchmarks, enrollment funnel movement, conversions, and optimization tracking.

5) **LANDING PAGES**

- a) **Up to one (1) conversion landing page**
- b) Campaign Creation:
 - i) Each landing page includes one hosted landing page on a custom domain, either a delegated subdomain provided by the Customer, or a .com domain purchased by Capture.
 - ii) Each landing page includes one (1) inquiry form launched from the Behavioral Intelligence Platform.
 - iii) Designated content writers and designers will use Customer brand guidelines to develop creative.
 - iv) Includes up to three (3) rounds of pre-launch layout and design revisions, and five (5) rounds of content revisions.
- c) Ongoing maintenance, with optimization to the best of our ability to meet or exceed Capture’s performance metrics.

6) **EMAIL MARKETING**

- a) **Includes two (2) Behavioral Email Series’ (12-13 emails per series)**
 - i) (1) Junior
 - ii) (1) Senior
- b) **Includes 45 ad hoc emails**
 - i) (10) Junior
 - ii) (35) Senior
- c) **Includes up to three (3) custom email templates per population.**
- d) Campaign Creation:
 - i) Designated content writers and designers will use Customer brand guidelines to develop creative.
 - ii) Includes up to three (3) rounds of pre-launch revisions per campaign.
 - iii) Standard data cleaning and loading services included.
- e) Ongoing maintenance, with optimization to the best of our ability to meet or exceed Capture’s performance metrics.
- f) Interactive web-based dashboard: Real-time data dashboard that presents key metrics such as click-through rate, clicks, performance against industry benchmarks, enrollment funnel movement, conversions, and optimization tracking.

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Final Audit Report

2024-06-13

Created:	2024-06-13
By:	Anne Freihofer (afreihofer@capturehighered.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAj9cx_usTsFxnbt-VCJ3C_0CiY3x-94gw

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-  Document emailed to Jim Lintner (jlintner@capturehighered.com) for signature
2024-06-13 - 5:01:39 PM GMT
-  Email viewed by Jim Lintner (jlintner@capturehighered.com)
2024-06-13 - 5:19:28 PM GMT
-  Document e-signed by Jim Lintner (jlintner@capturehighered.com)
Signature Date: 2024-06-13 - 5:30:05 PM GMT - Time Source: server
-  Agreement completed.
2024-06-13 - 5:30:05 PM GMT



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