

## MASTER SERVICES AGREEMENT

C0003112

This MASTER SERVICES AGREEMENT (“MSA” or Agreement), effective as of July 1, 2023 (“Effective Date”), is between Virginia Commonwealth University, a corporation and an institution of higher education of the Commonwealth of Virginia, whose address is 912 West Grace Street, Richmond, VA 23298 (“VCU”, or “University”), and Amergent, Inc., a Massachusetts corporation, with offices located at 9 Centennial Drive, Suite 201, Peabody, MA 01960, (“Amergent” or “Contractor”). VCU and Amergent are sometimes referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, VCU issued a Request For Proposals to solicit proposals for Direct Mail Services for Massey Cancer Center (MCC), RFP # 164912280CK issued December 21, 2022 (the RFP); and

WHEREAS, Amergent submitted its proposal dated January 20, 2023, (the “Proposal”) wherein it wished to be considered, inter alia, for the Services as more fully specified therein (the “Services”); and

WHEREAS, VCU considered all proposals submitted, including the Amergent’s Proposal, and VCU now desires to award to Amergent, as set forth in greater detail below; and

WHEREAS, Amergent desires to perform Direct Mail Services as set forth herein.

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

**1. CONTRACT DOCUMENTS.** The contract documents are integrated and shall consist of:

- A. This Master Services Agreement
- B. Exhibit A: Pricing
- C. RFP# 164912280CK in its entirety (incorporated herein by reference)
- D. Contractor’s proposal dated December 2, 2022 (incorporated herein by reference)
- E. Exhibit B: Professional Fundraising Counseling Services Addendum
- F. Exhibit C: Data and Intellectual Property Protection Addendum

All of the foregoing, together, the (“Contract”). Should a conflict arise among the foregoing, this MSA, and all Exhibits shall control.

**2. SERVICES/GOODS.** Amergent shall perform direct mail services including but not limited to: direct mail creation, implementation, printing, photography, customization, strategic planning, and data management.

**3. TERM and RENEWAL OF CONTRACT:** This contract shall have a two (2) year initial term (the “Initial Term”) and may be renewed by VCU upon mutual written agreement of authorized representatives of both Parties for three (3) successive one (1)-year periods (the “Renewal Term”) under the terms and conditions of this original Contract or as otherwise agreed in writing by the Parties at such time.

**4. FEES:** VCU shall pay Amergent the fees as described in Exhibit A. Invoices will be paid net 30 days for the Initial Term following receipt of a proper invoice, services rendered, or goods delivered, whichever is later pursuant to and in accordance with by § 42-45 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth*. Should VCU choose to exercise its right to Renew, the fee shall remain fixed during the Renewal Term. Thereafter, VCU shall pay any additional fees or payments due in accordance with this Section 4. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after receipt of invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days,

however. Fees appearing to be incorrect will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Interest on past due amounts accrues at the rate permitted by § 42-45 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth*. Amergent will receive payments via ACH-Paymode-X Basic.

For proper invoicing practices follow the link below.

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

**5. CONTRACTOR RESPONSIBILITIES. Amergent** shall perform direct mail services including but not limited to per the requirements of the RFP and Amergent's response: direct mail creation. Implementation, printing, photography, customization, strategic planning, and data management.

A. Service

1) Direct Mail Creation and Implementation:

a) Amergent shall provide a minimum of eight (8) mailings targeted to encourage current and lapsed donors to renew gifts at the same or higher level.

(1) Upgrading of strategies for increased giving from the door population, including multiple gift appeals per year.

b) Amergent shall provide up to four (4) upgrade mailings asking certain donors to give again within the same fiscal year with an estimated volume of 3,000 households per mailing.

c) Amergent shall provide four (4) mailings targeted to convert special event donors to annual unrestricted donors with an estimated volume of 2,800 households per mailing.

d) Amergent shall provide four (4) new donor acquisition mailings (possibly fall and spring) with a requested volume of 50,000 households per mailing.

e) Amergent shall provide quarterly mailings, if required, of an annual giving donor welcome packet with an estimated volume of 2,000 households per year.

f) Amergent shall provide five (5) leadership annual giving appeals with an estimated volume of 1,800 households per mailing.

(1) Personalized attention will be given to the VCU Massey Cancer Center's Massey's Club as they are a very generous mid level group.

2) Photography:

a) Amergent will utilize both stock and client-owned photographs as needed for appeals, with a minimum of four weeks to secure needed photos.

3) Variable Printing:

a) Implement variable printing to assist in transaction processing.

All communications to VCU Massey Cancer Center donors will allow for variable giving. Pertinent information about the donor and their giving are used to create personalized appeals specific to each household. All remittance devices include the necessary information, along with coding and scanline, for use by gift processing. This will ensure accurate acknowledgement of the gift and subsequent analysis of the particular appeal or project.

4) Postage:

a) Delivering all services with the result of high-quality direct mail pieces that qualify for non-profit

bulk rate postage.

- b) Provide first-class postage when requested by MCC.
- c) Provide first-class postage for the Leadership annual giving direct mail.

5) Customization:

- a) Brand and message all pieces consistent with existing MCC identity standards.
- b) Allow MCC input and final decision-making authority in the size, colors, inks, weights and formats of all publication pieces.
- c) Provide copy writing specific to MCC and should include detailed information about our research, mission, news, grateful patients and families, physicians and researchers.
- d) Amergent shall wait for MCC to issue formal, written approval of all pieces before production.
- e) Coordinate with MCC to develop a schedule for all mailings that works within the existing MCC development office communications plan.

6) Strategic Planning for Direct Mail Services:

- a) Amergent will meet with the MCC Annual Giving team to review results and then set into place the program for the following year based on the results and other strategic recommendations.
- b) Work with VCU Massey to develop the strategy for the full year and the impact on overall goals and use our weekly meetings to change course if needed throughout the year.
  - (1) Status meetings – Regular weekly conference calls to review the status of all DM and digital projects in process and upcoming project needs and deadlines.
  - (2) Flexible, daily communications – We welcome and expect ongoing, open communication by email or phone between Amergent and MCC.
  - (3) Mid-year and full-year presentations – These meetings will include high-level sessions that review Vital Signs, year-to-date or full-year campaign results, theme review, brainstorming, setting goals, organizational updates and more.

B. Management Requirements:

- 1) Provide a single project manager to work with the MCC development office.
  - a) Availability via phone and email and should be willing to meet face-to-face with MCC representatives when necessary.
- 2) Clearly outline all deadlines in writing, and these must be approved by MCC.
- 3) Detailed schedules will be provided before the start of the fiscal year to ensure timeliness of appeals and any necessary information from the client. A weekly status update will be sent prior to phone calls providing important details for each project.

C. Data Requirements

- 1) Provide data management Quality Assurance checks.

**6. GENERAL TERMS AND CONDITIONS**

- A. **APPLICABLE LAW AND COURTS:** This Contract shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia without regard to choice of law principles. The Parties agree

that all disputes arising under this Contract shall be brought in the state or federal courts located in Richmond, Virginia. To the extent any provision of the Contract is prohibited by Virginia law, or is otherwise not authorized by Virginia law, due to VCU's status as an agency of the Commonwealth of Virginia, such provision is null and void. Each party shall be responsible for its own legal fees and costs unless otherwise ordered by a court of law.

- B. ARBITRATION: Neither Party shall be compelled to arbitrate any matter or otherwise be subject to any form of alternative dispute resolution, but may request and/or opt to participate in alternative dispute resolution in its sole discretion.
- C. WAIVER OF CLAIMS: Notwithstanding anything contained herein to the contrary, VCU is an agency of the Commonwealth of Virginia and as such, pursuant to *Virginia Code § 2.2-514*, cannot waive or settle legal claims that VCU may have against another party nor may VCU bestow any right or obligation that is beyond the duly granted authority of the signatory to bestow or incur on behalf of the Commonwealth of Virginia.
- D. ANTI-DISCRIMINATION: Contractor certifies to the Commonwealth that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 9 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (§ 36 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth*). In every contract over \$10,000 the provisions in 1. And 2. Below apply:
  - 1) During the performance of this Contract, the Contractor agrees as follows:
    - a. VCU is an equal opportunity/affirmative action institution providing access to education and employment without regard to age, race, color, national origin, gender, religion, sexual orientation, veteran's status, political affiliation or disability. As such, the Contractor will not discriminate against any employee or applicant for employment because of age, race, color, national origin, gender, religion, sexual orientation, veteran's status, political affiliation or disability or any other basis prohibited by state law related to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
    - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  - 2) . The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor who performs work relative to this RFP.

- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: Contractor certifies that it does not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
- F. ANTITRUST: By entering into a contract, Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under this Contract.
- G. ASSIGNMENT OF CONTRACT: The Contract shall not be assignable by Contractor in whole or in part without the written consent of the University.
- H. TESTING AND INSPECTION: To the extent applicable, VCU reserves the right to conduct any testing/inspection it may deem advisable to assure goods and services conform to the specifications/Contract.
- I. TERMINATION OF CONTRACT:
  - 1) Either Party may terminate this Contract if the other Party materially breaches this Contract and such breach is not cured within thirty (30) days after written notice to the breaching Party.
  - 2) University reserves the right to terminate this Contract, without cause, in part or in whole, without penalty, upon sixty (60) days written notice to the Contractor.
  - 3) Either Party may terminate this Contract after the initial twelve (12) months of this Contract upon sixty (60) days written notice to the other Party.
- J. CHANGES TO THE CONTRACT: Changes may be made to the Contract:
  - 1) The parties may agree to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed by the parties as a part of their written Contract to modify the scope of the Contract.
  - 2) The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings.
  - 3) Material, substantive modifications, changes, and amendments to the Contract must be in a writing executed by authorized representatives of each party.

- K. NOTICE: All notices provided hereunder in regard to default, claims, actions, or similar events shall be in writing and delivered personally, or sent by registered or certified mail, return receipt requested, postage prepaid, to the respective party at the following addresses:

For VCU:

Director, Procurement Services 912 West Grace Street, 5<sup>th</sup> Floor Richmond, Virginia 23298-0327

For Contractor:

Robert Walsh

Vice President, Account Management

Amergent

9 Centennial Dr, Suite 201

Peabody, MA 01960

Any notice sent by any other means shall not be considered duly given or delivered unless the receiving party affirmatively acknowledges receipt. Notices with respect to any services and communications specifically for day-to-day servicing purposes shall be sent to the designated points of contact as specified by each Party.

- L. TAXES: Contractor acknowledges all sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73- 0076K.
- M. FAILURE TO DELIVER GOODS OR SERVICES: In case of failure to deliver goods or services in accordance with the Contract terms and conditions, VCU, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which VCU may have.
- N. SHIPPING: Contractor shall ship all goods FOB destination at the actual freight rate based upon the actual weight of the goods to be shipped.
- O. INSURANCE: Contractor certifies it will have the following insurance coverages, and any insurance otherwise required by applicable law, throughout the entire term of the Contract, as well as renewal terms. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with § 25 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth and Virginia Code* and 65.2-800 et seq.. Contractor further certifies all insurance coverage will be provided by insurance companies authorized by the Virginia State Corporation Commission to sell insurance in Virginia. Minimum Insurance Coverages and Limits Required for Most Contracts:
- 1) Worker's Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer.
  - 2) Employers Liability - \$100,000.
  - 3) Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products,

and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

- 4) Automobile Liability - \$1,000,000 per occurrence. (applicable only if motor vehicle is to be used in performance of this Contract)
  - 5) Cyber Security Liability - \$5,000,000 (applicable as determined by the University)
- P. DRUG-FREE WORKPLACE: During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) includes the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor providing services under this Contract. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.
- Q. NONDISCRIMINATION: As applicable, federal law requires compliance with the following:
- 1) 41 CFR § 60-1.4 Equal Opportunity Clause prohibiting discrimination on the basis of race, color, religion, sex, or national origin.
  - 2) 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability (60-741.5(a)) and protected veteran status (41 CFR 60-300.5(a)), and require affirmative action to employ and advance in employment qualified individuals with disabilities and qualified protected veterans.
- R. FERPA: To the extent that University provides to Contractor any identifiable student information, including student address, phone number and email address, the University hereby designates Contractor as a school official with a legitimate educational interest in using such student information, and Contractor agrees to use such information only for the purpose of fulfilling its obligations under this Contract. Contractor further agrees not to disclose any such student information to any individual other than the student except as required by applicable law, rule or regulation or court or governmental order or as authorized in writing by the University or the individual student. Contractor acknowledges that this protection of student information is necessary for the University's compliance with the *Virginia Code* § 23.1-405I and the federal Family Educational Rights and Privacy Act (FERPA).
- S. CONFIDENTIAL INFORMATION: "Confidential Information" means all information of a party ("Disclosing party") disclosed or made available to the other party ("Receiving party") that (i) is clearly marked or identified as such at the time of disclosure or within a reasonable time thereafter; or (ii) should be reasonably known by the Receiving party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. Confidential Information of VCU shall include, but not be limited to information about VCU personnel and students of VCU to the extent such information is not available to the public domain in accordance with the laws of the Commonwealth of Virginia and FERPA. Contractor shall use its reasonable efforts to prevent and protect Confidential Information from unauthorized use or disclosure, with

at least the same degree of care that Contractor uses to protect its own confidential and proprietary information, but in no event less than a reasonable degree of care under the circumstances. Each Party will only disclose the other Party's Confidential Information to its employees, consultants, or subcontractors only on a need-to-know basis, provided that such employees or subcontractors are subject to confidentiality obligations no less restrictive than those contained herein. Upon the completion of the services and upon request of VCU, Contractor shall return all Confidential Information received in written format, including copies or reproductions or other media containing Confidential Information within seven (7) days of such request.

- T. VA FOIA: Nothing contained herein is intended to limit VCU's compliance with the Virginia Freedom of Information Act ("VFOIA"). For clarity, contracts and pricing between VCU and its vendors are not considered to be exempt from VFOIA requests.
- U. INDEMNIFICATION: Contractor agrees to indemnify, defend, and hold harmless VCU, the Commonwealth of Virginia, and their officers, employees and agents from any claim, damage, liability, injury, expense or loss, including defense costs and attorneys' fees, arising from Contractor's negligence under this Agreement. Accordingly, VCU shall promptly notify Contractor of any claim or action brought against VCU in connection with this Agreement. Upon such notification, and at the request and direction of VCU and/or the Office of the Attorney General, Contractor will immediately defend any such claim or action pursuant to the provisions and requirements of *Virginia Code* § 2.2-514.
- V. LIMITATION OF LIABILITY: Contractor shall be liable for the direct damages caused by the negligence of itself, its officers, employees, and agents in connection with this Contract or any goods, services, actions, or omissions relating to this Contract.
- W. STATUTORY DAMAGES: VCU is not authorized to waive damages granted or otherwise available by statute.
- X. SOVEREIGN IMMUNITY: VCU is an agency of the Commonwealth of Virginia and is afforded the protection of sovereign immunity under Virginia law. Any claims against VCU or the Commonwealth are subject to the requirements established under Virginia law for bringing such claims against VCU or the Commonwealth, including the Virginia Tort Claims Act (*Virginia Code* §§ 8.01- 195.1 et seq.) and other applicable statutes relating to claims against the Commonwealth or its agencies. Notwithstanding any other provision, nothing in this Contract shall be deemed to be or construed as a waiver of VCU's or the Commonwealth's sovereign immunity, or any other applicable requirements under Virginia law for bringing claims against VCU or the Commonwealth. The total cumulative liability of the University, its officers, employees, and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to this contract, shall not under any circumstance exceed payment of the maximum purchase price.
- Y. FORCE MAJEURE: Neither Party will be responsible for any losses resulting from delay or failure in performance resulting from any cause beyond either Party's reasonable control, including without limitation, war, strikes or labor disputes, civil disturbances, fires, natural disasters, pandemics, including if VCU, in its sole discretion, must close a campus location or take other restrictive actions due to concerns related to the COVID-19 pandemic or acts of God. If the delay or failure in the performance of the Party claiming Force Majeure continues for thirty (30) days or more, then the Party not claiming Force Majeure may terminate this Agreement by written notice to the other Party without penalty. Any funds paid will be reimbursed pro rata based on Services not provided
- Z. AUDIT: The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or State auditors shall have full access to and

the right to examine any of said materials during said period, provided University provides Contractor with thirty (30) days written notice of such audit and performs the audit during Contractor's business hours.

AA. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that VCU shall be bound hereunder only to the extent the funds are appropriated, or otherwise made available, from the Virginia General Assembly or other funding source, or which funds may hereafter be provided for the purpose of this Contract.

BB. ADDITIONAL GOODS AND SERVICES: The University may acquire other goods or services that the supplier provides than those specifically solicited. The University reserves the right, subject to mutual contract, for Contractor to provide additional goods and/or services under the same pricing, terms and conditions and to make modifications or enhancements to the existing goods and services. Such additional goods and services may include other products, components, accessories, subsystems, or related services newly introduced during the term of the Contract.

CC. REALSOURCE REGISTRATION: This Contract shall result in a purchase order or purchase orders issued via VCU's source-to-pay platform, RealSource. Contractor shall register in RealSource upon award of contract. For information on registering, visit [realsource.vcu.edu](http://realsource.vcu.edu). Registration is free, and registered vendors shall have access to purchase order, invoice, and payment information. Contractor is responsible for the security of its RealSource portal account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of the Contractor's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to the Contractor's failure to update or protect its account information. If this is a cooperative procurement, this clause shall apply to orders placed by VCU only.

DD. eVA REGISTRATION AND FEES: Contractor agrees to self-register with the Commonwealth of Virginia's electronic procurement system, eVA (information on eVA can be found at <http://www.eva.virginia.gov>), and agrees to maintain self-registered status for the duration of this Contract. The Commonwealth shall assess eVA transaction fees as specified below for each order resulting from this Contract. The Vendor Transaction Fee is:

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

The specified Vendor Transaction Fee will be invoiced by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and the invoice is payable 30 days after the invoice date.

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

## 7. SPECIAL TERMS AND CONDITIONS

A. ADVERTISING: Contractor shall not state in any of its advertising or product literature that the University, the Commonwealth of Virginia, or any agency or institution of the Commonwealth has purchased or uses its products or services.

B. TRADEMARKS/LOGOS: The University retains all rights, title and interest to its trademarks, logos and other intellectual property. Contractor shall first submit a request in writing to the VCU Division of

University Relations prior to use of any VCU marks, name, or logos.

- C. SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS: The Contractor shall extend any special educational or promotional sale prices or discounts immediately to University during the term of this Contract. Such notice shall also advise the duration of the specific sale or discount price.
- D. EXTRA CHARGES NOT ALLOWED: The Contract price shall reflect all fees to be incurred for the performance of the Contract, including all applicable freight and installation charges. Any additional fees that arise during the performance of the Contract shall only be paid if approved by the University prior to incurring such fees.
- E. ADDITIONAL USERS OF CONTRACT: It is the University's intent to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institution, or any University-related foundation (Additional Users) may access this Agreement if authorized by Selected Firm.

To that end and if agreeable with the Contractor, upon written request from Additional Users the Contractor may allow access to the contract. Although the University desires to provide access on such contract to Additional Users, the Contractor is not required to provide such access. A Contractor's willingness to provide this access to Additional Users, will not be a consideration in awarding this contract. Although the Additional Users have access to any resulting contract, Additional Users are not bound to use the contract and any use of the contract is strictly optional.

If the Additional Users choose to access the contract and the Contractor agrees to such access, the terms and conditions of the contract will be in full force and effect as between the Additional Users and the Contractor. VCU will have no responsibility for the resolution of any contractual disputes, or for payment for services rendered which may arise from an Additional User accessing the contract. The Contractor understands and agrees that it shall not have any recourse against VCU with respect to any claim it may have against another Additional User that accessed this contract.

- F. GRAMM-LEACH-BLILEY ACT: The Contractor shall comply with the Act by implementing and maintaining appropriate safeguards to protect and prevent unauthorized release of student, faculty and staff nonpublic information. Nonpublic information is defined as social security numbers, or financial transactions, bank, credit, and tax information.
- G. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the University with the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.
- H. CRIMINAL BACKGROUND INVESTIGATION: If Contractor employees and agents will be on the VCU campus, or have access to protected data as defined herein, Contractor must comply with the following: Contractor shall ensure that its employees, full-time or part-time, including newly hired, re-hired, seasonal, and/or temporary, who may have access to VCU confidential or proprietary information, or data about VCU personnel or students, have passed a criminal background check pursuant to *Virginia Code* § 2.2-1201.1. Criminal background checks shall comply with the standards set forth in VCU's employment policies found at:

<http://www.policy.vcu.edu/sites/default/files/Criminal%20Conviction%20Investigations.pdf>

Specifically, Contractor shall ensure an investigation is conducted by a third-party vendor utilizing courthouse records and national databases to obtain records within the past seven

(7) years. Convictions related to drugs, violence and/or sexual behavior are generally considered job related due to the nature of the VCU environment and the need to provide reasonable levels of protection for students, patients, employees, visitors, and institutional resources.

- I. IDENTIFICATION CARDS: All Contractor employees authorized to work at VCU must obtain a VCU identification card. Information on obtaining a card is available at <http://vcucard.vcu.edu/>. Contractor's employees must wear their VCU identification when they are on VCU property.
- J. REPRESENTATIONS AND WARRANTIES: All representations and warranties made by University are made to the best of its knowledge at the time the representation or warranty is made. University will use its best efforts to comply with all conditions and restrictions on its accounts and the services provided hereunder.
- K. WARRANTY:
  - 1) By Contractor. Except as specifically set forth herein, Contractor makes no warranties, express or implied, with respect to the performance of its Services hereunder. Contractor disclaims any implied warranty of merchantability or implied warranty or fitness for a particular purpose. University acknowledges and agrees that any projections or estimates by Contractor are estimates only and not a guarantee or representation that any program will achieve a specific or minimum result.
  - 2) By University. University represents and warrants that any data or materials that it provides to Contractor or uses in its marketing program, and the provision of same to Contractor for its use as permitted by this Agreement, does not and will not in any way infringe upon any intellectual property rights or violate any contractual or privacy rights of any third party, and that any University marketing activity that results from the Services will comply with all relevant laws.
  - 3) Amergent represents and warrants that:
    - a) Its performance of the Services does not and will not violate or in any way infringe upon any intellectual property rights or other rights of third parties, including property, contractual, employment, trade secrets, copyright, patent, proprietary and non-disclosure rights.
    - b) It has the right and authority to enter into this Agreement and to perform the Services described herein, and that it shall comply with all applicable federal and state laws, regulations or ordinances in performing the Services, including the then-current industry guidelines promulgated by the Direct Marketing Association, Interactive Advertising Bureau or other applicable trade group.
    - c) It will not recommend or provide any data, or recommend a third-party marketing program, that it knows or should reasonably know violates the rights of any third-party.
    - d) It is the owner or licensee of any software required to provide the Services and has the right to develop, transfer, license, or assign all or portions of the Deliverables as required by this Agreement.
    - e) In performing the Services, Amergent will work in a diligent, efficient, and skillful manner commensurate with the highest standards of its profession.
      - 1) Client represents and warrants that:
        - (a) It has authority to enter into this Agreement and carry out its obligations pursuant to this Agreement. RFP 164912280CK Negotiations Document Page 5 of 8.

- (b) Any data that Client provides to Amergent or uses in its marketing program (“Client Data”), and the provision of same to Amergent for its use as permitted by this Agreement, does not and will not or in any way infringe upon any intellectual property rights or violate any contractual or privacy rights of any third-party.
  - (c) Any Client marketing activity that results from the Services will comply with all relevant federal or state laws or regulations and all applicable obligations imposed by the pertinent Direct Marketing Association guidelines and requirements.
- L. SECTION 508 COMPLIANCE: All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of the University (the “Technology”) shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology clause below shall be construed to achieve full compliance with the Information Technology Access Act, *Virginia Code* §§ 2.2-3500 through 2.2-3504.
- M. DELIVERY AND STORAGE: It shall be the responsibility of the Contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. VCU will not assume any responsibility for receiving these shipments. Contractor shall check with VCU and make necessary arrangements for security and storage space in the building during installation.
- N. NONVISUAL ACCESS TO TECHNOLOGY: All Technology shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Contract:
1. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
  2. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
  3. nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
  4. the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if University determines (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available. Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices. If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration. The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, *Virginia Code* §§ 2.1-807 through 2.1-811.

## **8. FEDERAL TERMS AND CONDITIONS**

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

- A. Equal Employment Opportunity (E.O. 11246 as amended by E.O. 11375 and supplemented by 41 CFR part 60).
- B. For construction with Federal funds: the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by 29 CFR part 5
- C. Copeland "Anti-Kickback" Act (40 U.S.C. 3145 and 29 CFR part 3).
- D. Where applicable, the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by 29 CFR part 5.
- E. For non-profit organizations and small business, patent rights will be governed by 37 CFR part 401, "Rights to Inventions Made by Non-Profit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Contracts."
- F. The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387.), as amended.
- G. Mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- H. When applicable, this Contract is subject to Debarment and Suspension (E.O.s 12549 and 12689) as provided in 2 CFR part 180.
- I. The BYRD Anti-Lobbying Amendment (31 U. S. C. 1352): awards of \$100,000.00 or more will file the required certification.
- J. This contractor and subcontractor shall abide by the requirements of 41 CFR 60- 1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

## **9. INFORMATION SECURITY / DATA PRIVACY**

- A. The University's Data and Intellectual Property Protection Addendum is attached and incorporated herein as Exhibit C.

## **10. STATE FUNDRAISING REGISTRATION COMPLIANCE**

- A. University and Contractor agree to comply with all requirements of state and federal law relating to the fundraising activities to be conducted hereunder, including all applicable statutes, rules, and regulations of which each has knowledge. The terms of the Professional Fundraising Counsel Services Addendum, attached hereto and incorporated herein as Exhibit B, shall apply to all professional fundraising counsel services provided by Contractor hereunder.

IN WITNESS WHEREOF, the Parties have executed this Contract on the dates designated below.

By: **VIRGINIA COMMONWEALTH UNIVERSITY**

Printed Name: John McHugh

Title: Director, Procurement Services

Date: 6/16/2023

DocuSigned by:  
*John McHugh*  
EE6DA7427C67468...

By: **AMERGENT, INC.**

Printed Name: George whelan

Title: President

Date: 6/16/2023

DocuSigned by:  
*George Whelan*  
A430A15B2Z714D8...

By: Karol Kain Gray

Printed Name: Karol Kain Gray

Title: Senior VP & CFO

Date: 6/16/2023

DocuSigned by:  
*Karol Kain Gray*  
0C529CC846714C3...

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
PRICING**

**a) Renewal Mailings  
Estimated Expenses Per Service**

<b>Service Type</b>	<b>Cost</b>
Copy writing	\$12,000
Data management	\$5,600
E-solicitation work	NA
Graphic design	\$12,000
List acquisition	NA
Mailing services (production)	\$25,658
Postage	\$18,160
Printing	\$27,962
Project management	NA
Stock photography	NA
Additional service(s)	

<b>Overall Project Total Expense</b>	<b>\$101,380</b>
--------------------------------------	------------------

**b) Upgrade Mailings\***  
**Estimated Expenses Per Service**  
*\*part of overall renewal program*

<b>Service Type</b>	<b>Cost</b>
Copy writing	NA
Data management	NA
E-solicitation work	NA
Graphic design	NA
List acquisition	NA
Mailing services (production)	NA
Postage	NA
Printing	NA
Project management	NA
Stock photography	NA
Additional service(s)	NA

<b>Overall Project Total Expense</b>	<b>NA</b>
--------------------------------------	-----------

**c) Special Event Conversion Mailings  
Estimated Expenses Per Service**

<b>Service Type</b>	<b>Cost</b>
Copy writing	\$500
Data management	\$700
E-solicitation work	NA
Graphic design	\$500
List acquisition	NA
Mailing services (production)	\$4,099
Postage	\$5,175
Printing	\$6,094
Project management	NA
Stock photography	NA
Additional service(s)	

<b>Overall Project Total Expense</b>	<b>\$17,068</b>
--------------------------------------	-----------------

**d) Acquisition Mailings  
Estimated Expenses Per Service**

<b>Service Type</b>	<b>Cost</b>
Copy writing	\$3,500
Data management	\$4,900
E-solicitation work	NA
Graphic design	\$3,500
List acquisition	\$35,470
Mailing services (production)	\$28,690
Postage	\$36,288
Printing	\$42,661
Project management	NA
Stock photography	NA
Additional service(s)	

<b>Overall Project Total Expense</b>	<b>\$155,009</b>
--------------------------------------	------------------

**e) Welcome Packet Mailings  
Estimated Expenses Per Service**

<b>Service Type</b>	<b>Cost</b>
Copy writing	\$1,000
Data management	\$2,400
E-solicitation work	NA
Graphic design	\$2,000
List acquisition	NA
Mailing services (production)	\$5,305
Postage	\$2,300
Printing	\$10,629
Project management	NA
Stock photography	NA
Additional service(s)	

<b>Overall Project Total Expense</b>	<b>\$23,634</b>
--------------------------------------	-----------------

**f) Leadership Annual Giving Mailings  
Estimated Expenses Per Service**

<b>Service Type</b>	<b>Cost</b>
Copy writing	\$7,500
Data management	\$2,500
E-solicitation work	NA
Graphic design	\$7,500
List acquisition	NA
Mailing services (production)	\$6,764
Postage	\$4,950
Printing	\$15,890
Project management	NA
Stock photography	NA
Additional service(s)	

<b>Overall Project Total Expense</b>	<b>\$45,104</b>
--------------------------------------	-----------------

<b>Monthly Management Fee</b>	<b>\$3,500.00</b>
-------------------------------	-------------------

**EXHIBIT B**  
**PROFESSIONAL FUNDRAISING COUNSEL SERVICES ADDENDUM**

This Professional Fundraising Counsel Services Addendum (the "Addendum") is made a part of any Schedule(s) entered into by and between Amergent, Inc. (hereinafter, "Consultant") and Virginia Commonwealth University (hereinafter, "University") pursuant to the Master Services Agreement dated July 1, 2023 and ending two (2)-years thereafter (collectively the "Agreement") for professional fundraising counsel services to be provided during the Term of the Agreement. This Addendum will remain in full force and effect if Master Services Agreement is renewed for additional one (1) year periods until final expiration of Master Services Agreement.

WHEREAS, in order to effect registration in compliance with the laws of the states listed below, and for that portion of the Agreement where activities will be conducted in the states listed below, this Addendum is required to, among other things, set forth the ending date of the Agreement; and

WHEREAS, the Parties wish to make the applicable ending date provisions of the following states consistent with the terms of the Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants herein contained, the sufficiency of which is acknowledged as evidenced by the signatures of the Parties hereto, it is mutually agreed as follows:

1. University wishes to strengthen its direct marketing and fundraising program as well as its calls to action to the public. The services to be provided by Consultant in connection therewith are as set forth in the Schedule(s). Consultant may also provide general advice to University on regulatory and related accounting issues such as joint cost allocation, registration compliance, disclaimers, etc. However, Consultant does not directly engage in telemarketing, direct solicitation of donors, nor is University in an attorney-University or accountant or auditor-University relationship with Consultant and nothing herein should be construed that Consultant is providing legal or accounting advice or directly soliciting any gifts.

2. It is the intention of the Parties hereto that Consultant shall act as a "professional fundraising counsel", as that term is generally defined under the applicable state laws, with respect to the Services provided in the Agreement. Consultant will not at any time solicit funds, assets, or property for charitable purposes, receive or control funds, assets, or property solicited for charitable purposes, or employ, procure, or engage any compensated person to solicit, receive, or control funds, assets or property for charitable purposes. Consultant will not have custody or control of contributions at any time. University exercises control and approval over the content, volume and frequency of all solicitations. University is an organization dedicated to the success and well-being of VCU students, patients, faculty, staff and community. Funds received as a result of this campaign will be used to further these purposes and to pay for expenses.

3. University agrees that it has, or will, timely register in each state that has such a registration requirement for charitable organizations and that Consultant will incur no liability for its failure to perform any Services with respect to solicitations by University in any jurisdiction where University is not registered, as indicated by information received from the regulatory agency.

4. Consultant and University agree to timely exchange any information reasonably required to enable each to comply with all applicable charitable solicitation registration requirements.

5. In order to comply with various state statutes, the following shall be included as terms of the Agreement for the various states which, in the event of any conflict, will supersede any conflicting term in the Agreement to the contrary:

(a) General.

In accordance with Section 1(a) of the Agreement, University and Consultant agree to comply with all requirements of state and federal law relating to the fundraising activities to be conducted hereunder, including all applicable statutes, rules, and regulations of which each has knowledge. Each Party represents and warrants that it will severally and not jointly maintain, at its own expense, all federal or state licenses, certificates, authorizations, bonds, and permits necessary to carry out its obligations under this Agreement. The Parties agree to sign contract addenda and various state forms from time to time as is reasonably necessary to comply with changing state fundraising regulations and as registration in various states or elsewhere becomes required by law.

(b) For purposes of registration in **California**, the following shall apply:

- i. This Agreement will commence on the date the Agreement is executed by University within the State of California and will terminate on June 30, 2025, unless extended by mutual written agreement of the Parties. Services will commence with respect to solicitation of contributions in California on July 1, 2023.
- ii. University has the right to cancel this Agreement without cost, penalty, or liability for a period of 10 days following the date on which the Agreement is executed. University may cancel the Agreement by serving a written notice of cancellation on Consultant. If such notice is mailed, it shall be sent by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of 5 calendar days from the date of mailing.
- iii. Following the initial 10-day cancellation period, University may terminate this Agreement by giving 30 days' written notice. If such notice is mailed, it shall be sent by certified mail, return receipt requested, and shall be deemed effective upon the expiration of 5 calendar days from the date of mailing. In the event of termination under this subdivision, University shall be liable for services provided by Consultant to the effective date of the termination.

(c) For purposes of registration in **Mississippi**, the following shall apply:

University's solicitation activity under this Agreement is to commence on July 1, 2023 within the State of Mississippi, or 10 working days after the Agreement is received by the Office of the Secretary of State. Services and the Agreement will terminate on June 30, 2025, unless extended by mutual written agreement of the Parties.

(d) For purposes of registration in **New York**, the following shall apply:

- i. No Services shall be performed under this Agreement until Consultant shall have received an acknowledgement from the Attorney General of a copy of the Agreement or the Agreement shall have been on file with the Attorney General for at least 15 days, whichever is earlier. The Agreement will commence on July 1, 2023 within the State of New York. The Agreement will terminate on June 30, 2025 within the State of New York.
- ii. University's right to cancel this Agreement: It is understood by both Parties that University has the right under New York state law to cancel this Agreement in the state of New York and that University does not have to give any reason for the cancellation. By law, the Parties to this Agreement cannot waive or modify this right by any pre-existing agreement or by any subsequent agreement between the Parties. Therefore, University may cancel this Agreement in the state of New York without cost, penalty, or liability if University notifies Agreement in writing as provided below.

- iii. Period during which Agreement may be canceled: Consultant is currently registered with the New York State Office of the Attorney General, Charities Bureau. At any time Consultant is registered with the New York State Office of the Attorney General, Charities Bureau, then University may cancel this Agreement in New York State at any time up to and including the 15<sup>th</sup> day after this Agreement was filed by Consultant with the New York State Office of Charities Registration, regardless of the execution date of this Agreement. If, however, Consultant is not registered with the New York State Office of the Attorney General, Charities Bureau at the time this Agreement is signed, then University may cancel at any time after it is signed.
- iv. Procedure for canceling this Agreement: University may cancel this Agreement by giving Consultant written notice of cancellation. This notice can be in the form of a letter indicating that University does not intend to be bound by the Agreement in the state of New York. The notice of cancellation may be hand-delivered or mailed to Amergent at 9 Centennial Dr, Peabody, MA 01960. University must also mail a duplicate copy of the notice of cancellation to the State of New York, Office of the Attorney General, Charities Bureau, The Capitol, Albany, NY 12224.
- v. When the cancellation is effective: If the notice of cancellation is hand-delivered, the cancellation is effective as soon as it is delivered to Consultant. If the notice of cancellation is mailed, the cancellation is effective as soon as the notice is deposited, properly addressed and postage pre-paid, in a mailbox.

- (e) For purposes of registration in **Pennsylvania** and any other states requiring registration and/or filing of contracts between professional fundraising counsels and charitable organizations, the following shall apply:

Consulting services by Consultant with respect to solicitation in Pennsylvania will commence on July 1, 2023, or 10 working days after this Agreement is received by the Bureau of Charitable Organizations, whichever date is later. Similarly, for purposes of registration in other states requiring registration and/or filing of contracts between professional fundraising counsels and charitable organizations, consulting services by Consultant with respect to solicitation in any particular state will not commence until this Agreement is properly registered in that state.

Services and the Agreement will terminate on June 30, 2025, unless extended by mutual written agreement of the Parties.

- (f) For purposes of interpreting this Agreement under the laws of **Oregon** and any states with laws like OR. Rev. Stat. § 128.814(1)(a):

If University has not received written proposals from at least 3 “professional fundraising firms” (as that term is defined by Oregon law) and the term of this Agreement exceeds 2 years, then, in those aforementioned states, the term of this Agreement shall be 2 years, automatically renewable for succeeding 2-year terms unless notice of termination is provided 90 days prior to the end of any 2-year term.

- (g) For the purposes of registration in **South Carolina**, the following shall apply:

The South Carolina Registration Number of University is **C55027**. The South Carolina Registration Number of Consultant is **P2185**.

6. Consistent with University's own internal plan of implementation of University's joint educational and fundraising activities, University enters into this Agreement for the purpose of conducting a series of discrete campaigns which include, whenever possible, a call to action to qualified individuals who have the interest and/or the ability to take an independent act to assist University in reaching its program mission and goals and, at the same time, when appropriate, to include an incidental request for support. As such, University intends to allocate or not allocate as required by the American Institute of Certified Public Accountants (A.I.C.P.A.), in consultation with its own Certified Public Accountant, to program services the fees and expenses incurred in producing materials generated under this Agreement, consistent with the provisions of Statement of Position 98-2 issued by the A.I.C.P.A., or any approved successor document. This "joint activity" is internal to University and does not involve Consultant in any way with the exception of the consulting services otherwise provided for in this Agreement.

7. In all other respects not specifically modified herein, the Agreement shall remain in full force and effect and this Addendum is attached thereto and incorporated therein in the same manner as if a part thereof. Further, this Addendum may not be modified, changed or terminated in whole or in part, in any manner except by an agreement duly signed by University and Consultant.

**EXHIBIT C****Data and Intellectual Property Protection Addendum**

## 1. Definitions

- a. “End User” means the individuals authorized by the University to access and use the Services provided by Contractor under this Addendum.
- b. “Personally Identifiable Information” includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; “personal information” as defined in *Virginia Code* § 18.2-186.6 and/or any successor laws of the Commonwealth of Virginia; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; “medical information” as defined in *Virginia Code* § 32.1-127.1:05; “protected health information” as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver’s license numbers; and state- or federal- identification numbers such as passport, visa or state identity card numbers.
- c. “Securely Destroy” means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88 guidelines relevant to data categorized as high security.
- d. “Security Breach” means a security-relevant event in which the security of a system or procedure used to create, obtain, transmit, maintain, use, process, store or dispose of data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
- e. “Services” means any goods or services acquired by the University from the Contractor.
- f. “University Data” includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student and personnel data.

## 2. Rights and License in and to the 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 Addendum solely for the purpose of performing its obligations hereunder. This Addendum does not give a party any rights, implied or otherwise, to the other’s data, content, or intellectual property, except as expressly stated in the Addendum.

## 3. Intellectual Property Disclosure/Rights

- a. Unless expressly agreed to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared by Contractor (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University.
- b. Contractor warrants to the University that the University will own all rights, title and interest in any intellectual property created for the University as part of the performance of this Addendum and will have full ownership and beneficial use thereof, free and clear of claims of any nature by any third party including, without limitation, copyright or patent infringement claims. Contractor agrees to assign and hereby assigns all rights, title, and interest in any and all intellectual property created for the University as part of the performance of this Addendum to the University, and will execute any future assignments or other documents needed for the University to document, register,

or otherwise perfect such rights. Nothing in this section is, however, intended to or shall be construed to apply to existing intellectual property created or owned by the vendor that the University is licensing under this Addendum. For avoidance of doubt, the University asserts no intellectual property ownership under this clause to any pre-existing intellectual property of the vendor, and seeks ownership rights only to the extent Vendor is being engaged to develop certain intellectual property as part of its services for the University.

- c. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research Addendums administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

#### 4. Data Privacy

- a. Contractor will use University Data only for the purpose of fulfilling its duties under this Addendum 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 Addendum 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 Contractor obligations under this Addendum. Contractor will ensure that employees who perform work under this Addendum have received and agree to appropriate instruction as to how to comply with the data protection provisions of this Addendum.
- d. The following provision applies only if Contractor will have access to the University's education records as defined under the Family Educational Rights and Privacy Act (FERPA): Contractor acknowledges that for the purposes of this Addendum it will be designated as a "school official" with "legitimate educational interests" in the University education 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 the education records only for the purpose of fulfilling its duties under this Addendum for University's and its End User's benefit, and will not share such data with or disclose it to any third party except as provided for in this Addendum, required by law, or authorized in writing by the University.

#### 5. 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. Without limiting the foregoing, Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) in accordance with industry best practices commensurate to the sensitivity of the information; such as controls outlined in the Moderate or High control baselines in the latest version of National Institute of Standards and Technology Special Publication 800-53.
- b. If Contractor stores Personally Identifiable Information as part of this Addendum, Contractor warrants that the information will be stored in accordance with industry best practices commensurate to the sensitivity of the information; such as controls outlined in the Moderate or High control baselines in the latest version of National Institute of Standards and Technology Special Publication 800-53.
- c. Contractor will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under this Addendum.

#### 6. Employee Background Checks and Qualifications

Contractor shall ensure that its employees, full-time or part-time, including newly hired, re-hired, seasonal, and/or temporary, who may have access to VCU confidential and/or proprietary information, and/or data about VCU personnel and/or students, have passed a criminal background check pursuant to

the *Virginia Code* §2.2-1201.1. Criminal background checks shall comply with the standards set forth in VCU's employment policies:

<http://www.policy.vcu.edu/sites/default/files/Criminal%20Conviction%20Investigations.pdf>

Individuals with failed background checks shall not participate in the performance of this Addendum and must undergo additional evaluation before access to information is provided. Contractor shall maintain records sufficient to document the completion of required criminal background checks. The University reserves the right in its sole discretion to perform audits of Contractor's compliance at the University's expense to ensure compliance with this term. Contractor shall reasonably cooperate in the performance of such audits, provided University provides Contractor with thirty (30) days' written notice of such audit and performs the audit during Contractor's business hours. Contractor's obligation to maintain records documenting completion of criminal background checks shall survive the termination of this Addendum for a period of seven (7) years.

7. Data Authenticity and Integrity

Contractor will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. Contractor will be responsible under the terms of this Addendum, unless otherwise specified elsewhere in this Addendum, for converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.

8. Security Breach

a. Response. Upon becoming aware of a Security Breach, Contractor will timely notify the University consistent with applicable state or federal laws, 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.

1) If Contractor must under this Addendum create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, the following provisions apply. In addition to any other remedies available to the University under law or equity, Contractor will reimburse the University in full for all costs incurred by the University in investigation and remediation of any Security Breach caused by Contractor, 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; 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, if the Parties mutually deem it appropriate to do so under the circumstances; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach.

2) If Contractor will NOT under this Addendum create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, the following provisions apply. In addition to any other remedies available to the University under law or equity, Contractor will reimburse the University in full for all costs reasonably incurred by the University in investigation and remediation of any Security Breach caused by Contractor.

9. Response to Legal Orders, Demands or Requests for Data

- a. Except as otherwise expressly prohibited by law, Contractor will:
  - immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data;
  - consult with the University regarding its response;
  - cooperate with the University's reasonable requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
  - upon the University's request, provide the University with a copy of its response.
- b. If the University receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Virginia Freedom of Information Act) or request seeking University Data maintained by Contractor, the University will promptly provide a copy to Contractor. Contractor will promptly supply the University with copies of data required for the University to respond, and will cooperate with the University's reasonable requests in connection with its response.

#### 10. Data Transfer Upon Termination or Expiration

- a. Upon termination or expiration of this Addendum, Contractor will ensure that all University Data are securely returned or destroyed as directed by the University in its sole discretion. Transfer to the University or a third party designated by the University shall occur within a reasonable period of time, and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are 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. 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.
- b. 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.

#### 11. Audits

- a. The University reserves the right in its sole discretion to perform audits of Contractor at the University's expense to ensure compliance with the terms of this Addendum. Contractor shall reasonably cooperate in the performance of such audits, provided University provides thirty (30) days written notice of such audit and performs the audit during Contractor's business hours. 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 Addendum create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data which has been identified to Contractor as having the potential to affect the accuracy of the University's financial statements, Contractor will at its expense conduct or have conducted at least annually a(n):
  - American Institute of CPAs Service Organization Controls (SOC 2) Type I audit, or other security audit with audit objectives deemed sufficient by the University, which attests the Contractor's security policies, procedures and controls;
  - vulnerability scan of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Addendum; and
  - formal penetration test of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Addendum.
 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 Addendum. The University may require, at University expense, Contractor to perform additional audits and tests, the results of which will be provided promptly to the University.

## 12. Compliance

- a. Contractor will comply with all applicable laws and industry standards in performing services under this Addendum. 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 relevant laws, regulations, and guidance that may be applicable to the service, such as: 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), Federal Export Administration Regulations, and Defense Federal Acquisitions Regulations.
- c. If the Payment Card Industry Data Security Standards (PCI-DSS) are applicable to Contractor service provided to the University, Contractor will, upon written request, furnish proof of compliance with PCI-DSS within 10 business days of the request.
- d. Section 508 Compliance: All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of the University (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology clause below shall be construed to achieve full compliance with the Information Technology Access Act, *Virginia Code* §§ 2.2-3500 through 2.2-3504.
- e. Nonvisual Access to Technology: All Technology shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:
  - i. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
  - ii. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
  - iii. nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
  - iv. the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

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

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

permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration. The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, *Virginia Code* §§ 2.1-807 through 2.1-811.

13. No End User agreements

In the event that Contractor enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Addendum shall apply.

14. Survival

The Contractor's obligations under Section 10 of this Agreement shall survive termination of this Addendum until all University Data has been returned or securely destroyed.