

MASTER SERVICES AGREEMENT

CONTRACT#: C0003302

This MASTER SERVICES AGREEMENT (“MSA”), effective as of the last date executed (“Effective Date”), is between Virginia Commonwealth University, a corporation and an institution of higher education of the Commonwealth of Virginia, whose address is 912 West Grace Street, Richmond, VA 23298 (“VCU”, or “University”), and Photoworks Creative Group Inc, a corporation, with offices located at 700 Rio Road West Charlottesville, Virginia 22901, (“Photoworks Creative Group Inc” or “Contractor”). VCU and Photoworks Creative Group Inc are sometimes referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, VCU issued a Request For Proposals to solicit proposals for Wall Graphics and Signage goods/services, RFP #163940601BS issued February 28th, 2023 (the RFP); and

WHEREAS, Photoworks Creative Group Inc submitted its proposal dated March 24th, 2023, (the “Proposal”) wherein it wished to be considered, inter alia, for the Wall Graphics and Signage goods/services as more fully specified therein (the “Services”); and

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

WHEREAS, Photoworks Creative Group Inc desires to provide the Wall Graphics and Signage goods/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 MSA
 - B. Price Proposal, Exhibit 1
 - C. RFP # 163940601BS in its entirety (incorporated herein by reference)
 - D. Contractor’s proposal dated March 24th, 2023 (incorporated herein by reference)

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

2. **SERVICES/GOODS.** Photoworks Creative Group Inc shall perform the following Services: Wall Graphics and Signage goods/services identified as more fully described in this Contract.
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 (4) successive one (1) year period (the “Renewal Term”)

under the terms and conditions of this original Contract or as otherwise agreed in writing by the Parties at such time.

If VCU elects to exercise the option to renew the contract for an additional one (1)-year period, the contract price(s) for the additional one (1) year shall not exceed the contract price(s) of the previous contract period increased/decreased by more than the percentage increase/decrease of the Services category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

4. **FEES:** VCU shall pay Contractor fees for the Services as set forth in Exhibit 1, Price Proposal. Such fees will be provided on an applicable Quote or SOW and Services shall only commence after receipt of a Purchase Order authorizing the Services. 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 Code of Virginia §§ 2.2-4347 through 2.2-4354 known as the Virginia Prompt Payment Act. All invoices will reflect the VCU Purchase Order number and will be emailed to VCU.Invoices@trustflowds.com or mailed to Accounts Payable, Box 3985, Scranton, PA 18505.
5. **PAYMENT METHOD AND EARLY PAYMENT DISCOUNT:**
 - A. Payment Method: ACH - Paymode-X Premium (Net 20)
 - B. Early Payment Discount: 1.5% Net 20 / Net 35
6. **CONTRACTOR RESPONSIBILITIES.** Wall Graphics and Signage goods/services that include but is not limited to:
 - A. Installation and Delivery: The Contractor shall furnish, install, and provide all labor, tools, parts, materials, and supervision to ensure proper inside delivery and installation of all graphics/signage. The Contractor shall offer free delivery for proofs and packages in a 20-mile radius of the Richmond, VA 23227 zip code on orders over \$500.
 - B. Signage Removal and Replacement: The Contractor shall be responsible for removal of existing signage/graphics and installation of any new signage. All items shall be assembled and ready for use, unless otherwise requested by VCU.
 - C. Creative Design: The Contractor shall be required to provide creative designs as needed to meet the visual and branding requirements specified by VCU. The designs shall be submitted for approval by VCU prior to implementation.
 - D. Quality Assurance: The Contractor shall ensure that all Wall Graphics and Signage goods/services provided meet the highest quality standards and comply with applicable laws, regulations, and industry best practices.
 - E. Timely Completion: The Contractor shall diligently perform the Services and complete the installation of graphics and signage within the agreed-upon timelines specified in the contract, or as otherwise mutually agreed upon in writing by the Parties.
 - F. Cleanliness: The Contractor shall be responsible for maintaining a clean and organized work area during the installation process and upon completion. Any debris, packaging materials, or waste resulting from the Services shall be promptly removed from the premises.

- G. **Safety and Compliance:** The Contractor shall adhere to all applicable health, safety, and environmental regulations throughout the provision of the Services. The Contractor shall be responsible for obtaining and maintaining any necessary permits or licenses required for the performance of the Services.
- H. **Acceptance of VCU Purchase Orders:** The Contractor will provide a detailed statement of work prior to any project summarizing specific services, deliverables, delivery dates, and cost. The Contractor will do so without introducing additional terms or conditions and will not require VCU to sign any separate agreements.

7. **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 § 2.2-514 of the *Code of Virginia (Virginia Code)*, 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 (VFECA), as amended, the Virginians With Disabilities Act (VDA), the Americans With Disabilities Act (ADA) and § 9 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth*. 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.

B. 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 term this Contract, 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, 5th Floor
Richmond, Virginia 23298-0327

For Contractor:
Vice President Business Development
700 Rio Road West
Charlottesville, Virginia 22901

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. Free shipping shall be included with all purchases over \$100.
- 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* § 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(a). Equal Opportunity Clause prohibiting discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin, and require affirmative action to employee and advance in employment qualified individuals without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
 2. 41 CFR § 60-300.5(a) and 41 CFR§ 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability (41 CFR § 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* § 23.1-405(C) 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) calendar 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.
- 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. 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.

EE. SWAM REPORTING: Contractor will submit a quarterly SWAM business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January. Contractor will submit the quarterly SWAM business reports, based upon the Contractor's proposed commitment to:

VCU SWaM Reporting
E-mail: swamreporting@vcu.edu

The quarterly SWAM business reports will contain the following information:

- a. SWAM firms 'name, address and phone number with which Contractor has contracted over the specified quarterly period.
- b. Contact person at the SWAM firm who has knowledge of the specified information.
- c. Type of goods and/or services provided over the specified period of time.
- d. Total amount paid to the SWAM firm as it relates to the University's account.

8. 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 the 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 the *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 the University are made to the best of its knowledge at the time the representation or warranty is made. University will use its best efforts to comply with all conditions and restrictions on its accounts and the services provided hereunder.
- K. WARRANTY: All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of **1 year** following date of delivery. Should any defect be noted by the owner, the University will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) the University does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to the University and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the University may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price
- 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* §§ 2.2-3500 through 2.2-3504.

9. 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 (Executive Order (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. 12549 and E.O.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.

 
PRESIDENT

DocuSigned by:

EE6DA7427C67468...

Director of Procurement Service

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

8/21/2023

8/28/2023



Exhibit 1

Item Category:	Price Per Square Foot		
Vinyl Wall Graphics	\$8.00	\$10.00 with 8520 3m cast laminate	
Fabric Wall Graphics	SEG(silicon edged graphic) \$8.00	\$17.34 with frame	SEG Frame surface mounted \$ 8.00 perlinear foot
Rigid Wall Graphics	\$16.00	3mm Cintra and direct print on it	
Window Graphics	\$9.60 premuim polyester Lintech		
Mesh Graphics	\$6.00		
Floor Decals	\$9.00		
Vehicle Wraps	NA		
Turf Graphics	NA		
Stadium Section Covers	NA		
Vinyl Banners	\$6.00		
Street Skin	NA		
Concrete Wall Decals	\$9.60		
Windscreens	\$8.00		
Concrete and Asphalt Decals	\$9.60		

**AGREEMENT
PUBLICLY ACCESSIBLE CONTRACT (PAC)**

This Publicly Accessible Contract (the “PAC”), effective the date the last signature is affixed below, is between Virginia Commonwealth University (the “University”), on behalf of the Virginia Higher Education Procurement Consortium (the “Consortium”) (collectively the "University"), and Photoworks Creative Group Inc, (“Contractor”).

TERM

This end date coincides with the Primary Agreement’s end date.

WITNESS

WHEREAS, the University and Photoworks Creative Group Inc have executed an agreement, CONTRACT#: C0003302, (the “Primary Agreement”), and included in the Primary Agreement is a third party access / cooperative clause. Now therefore, the University and Photoworks Creative Group Inc wish to express in this Agreement the specific terms that will allow third party access to the Primary Agreement.

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

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

- II. The University/Consortium will:
 - A. Promote the Primary Agreement on its website and through other channels (e.g., conferences) to non-Consortium members
 - B. Maintain an approved version of Photoworks Creative Group Inc’s logo on the Consortium website

III. Payment

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

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

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

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

IV. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt; or (4) if sent by electronic mail, when received (as verified by the email date and time) if delivered no later than 4:00 p.m. (receiver's time) on a business day or on the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or on a non-business day. All such notices will be addressed to a party at such party's address or facsimile number as shown below.

If to the University:

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

If to Photoworks Creative Group Inc:

Mark Smith
700 Rio Road West
Charlottesville, Virginia 22901

ACCEPTANCE

For VCU


For Photoworks Creative Group Inc

DocuSigned by:

EE60A7427C67468

John McHugh
Director Procurement Services
8/28/2023

Date



~~Mark Smith~~ **Geoffrey Kinzie**
~~Vice President~~ **Business Development**
August 3, 2023

Date

Agreement #: CONTRACT#: C0003302-PAC