

MASTER AGREEMENT

#:VCU-IT-6227

This Master Agreement ("Agreement"), effective as of the last date executed ("Effective Date"), is between Virginia Commonwealth University, a corporation and an institution of higher education of the Commonwealth of Virginia, whose address is 912 West Grace Street, Richmond, VA 23298 ("VCU", or "University"), and SGA AL Holdings, LLC DBA Zuri Group LLC a limited liability corporation, with offices located at 1146 10th St NEW, Suite 600, Washington, DC, 20036, ("Zuri Group" or "Firm"). VCU and Firm are sometimes referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, VCU issued a Request for Proposals to solicit proposals for Blackbaud CRM Consulting Services (the "Services/Goods"), RFP # 200162692DP issued April 15, 2025 (the RFP); and

WHEREAS, Firm submitted its proposal dated May 5, 2025, (the "Proposal") wherein it wished to be considered, among other things, for the Services/Goods as more fully specified therein; and

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

WHEREAS, Firm desires to perform the Services/Goods 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:

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

- A. ATTACHMENT A: General Contractual Provisions
- B. ATTACHMENT B: Specific Contractual Provisions
- C. ATTACHMENT C: Data Protection Addendum
- D. ATTACHMENT D: 200162692DP issued April 15, 2025, in its entirety (incorporated herein by reference);
- E. ATTACHMENT E: Firm's RFP Proposal, dated May 5, 2025, by reference

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

II. TERM and RENEWAL OF CONTRACT: This contract shall have a three (3) year initial term (the "Initial Term") and may be renewed by VCU upon mutual written agreement of authorized representatives of both Parties for two (2) successive two (2) 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 two (2)-year period, the contract price(s) for the additional two (2) 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 /Goods 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.

III. SERVICES/GOODS AND RESPONSIBILITIES: Firm shall provide consulting and related professional services to VCU to support the strategic enhancement, ongoing performance, and effective use of the Blackbaud

CRM (BBCRM) system within the Division of Development and Alumni Relations (DAR). Services provided under this Agreement shall be defined through project-based scopes of work as described herein.

Prior to the commencement of any project, the Firm and VCU shall engage on an as needed basis to develop a project scope of work. Each scope of work shall describe the services to be performed, estimated level of effort (in hours), timeline for completion, and specific deliverables. Once finalized and agreed upon, each scope shall be documented in a formal project specification under the terms of this master agreement.

The Firm shall apply a structured project management methodology to each engagement. This methodology, based on the standards of the Project Management Institute (PMI), shall be tailored to meet the needs of each project and guide the work through initiation, planning, execution, control, and closure phases. The project approach shall prioritize transparency, timeliness, and risk mitigation, while maintaining flexibility to adapt to evolving business requirements.

Firm shall ensure data security and confidentiality for all VCU and affiliated foundation data within BBCRM.

Strategic consulting on and ongoing support of VCU's BBCRM environment may include, but is not limited to the following:

A. BBCRM Consulting and Optimization

1. Advise DAR on best practices, system enhancements, and process improvements to optimize the BBCRM environment for donor management, alumni relations, and fundraising.
2. Provide strategic recommendations for aligning DAR's business processes with BBCRM capabilities and ensure that any necessary customizations meet university needs.

B. Customization and Configuration Support

1. Support the maintenance and refinement of new or existing configurations and customizations.
2. Troubleshoot and resolve issues with current configurations, workflows, and custom functionality to ensure the system remains aligned with business requirements.

C. Data Integration and Management

1. Guide DAR in maintaining data integrity and optimizing data management practices within BBCRM.
2. Assist with troubleshooting and resolving data integration and system interface issues.
3. Assist with establishing and creating new integrations.

D. Ongoing Maintenance and System Performance

1. Provide ongoing troubleshooting and technical support to resolve issues and ensure optimal system performance.

2. Recommend and implement updates, patches, and optimizations to maintain the system's functionality, scalability, and security.

E. Training and Knowledge Transfer

1. Provide training to DAR staff on BBCRM functionality, troubleshooting, and system maintenance.
2. Offer documentation and support for knowledge transfer to empower DAR to manage BBCRM effectively post-engagement.

F. Security and Confidentiality

1. Advise on potential security concerns and provide recommendations for risk mitigation.

IV. **FEES:** VCU shall pay Firm a fee of \$225 per hour as a blended rate for all roles necessary for any project occurring during the course of this agreement.

If any expense are required, such as travel, meals, or lodging, such expenses shall be supported by appropriate documentation and shall only be reimbursed in accordance with VCU travel rules and allowable cost policies.

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

VI. **PAYMENT METHOD AND PAYMENT TERMS:**

- A. VCU shall pay Firm within the net days specified below following receipt of a proper invoice, services rendered, or goods delivered, whichever is later pursuant to and in accordance with §§ 42-45 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth* (similar to the Virginia Prompt Payment Act).
- B. All payments will be made based on the net terms agreed upon in this Agreement, starting from after receipt of invoice or delivery, whichever occurs last. This shall not affect offers for early payment discounts, however.
- C. Fees appearing to be incorrect will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached.
- D. Specific Terms:
 1. Payment Method: ACH – Paymode-X – Basic
 2. Payment Terms: Net 35
- E. Firm acknowledges and agrees that the payment method agreed to under this Agreement shall apply to all invoices and payments related to this Agreement and any other current or future agreements, purchase orders, or transactions involving the same Firm, regardless of remit-to address or locations.

If VCU and Firm execute multiple agreements with different payment methods specified, VCU may, in its sole discretion, select and apply one preferred payment method across all such agreements

and associated transactions for consistency and administrative efficiency. VCU may update the payment method in the Firm's vendor file without further notice.

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

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

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

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

A. Primary Administrator:

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

Rob Downs, rmdowns@vcu.edu

B. Secondary Administrator:

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

Dana Parent, dmparent@vcu.edu

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

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

FOR VCU:

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

FOR FIRM:

Zuri Group, LLC

1146 19th St NW, Suite 600
Washington, DC 20036
contracts@zurigroup.com

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

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

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

VCU SBSD Reporting
swamreporting@vcu.edu

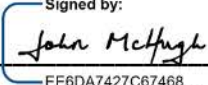
The quarterly SBSD business reports will contain the following information:

- A. SBSD firms' name, address and phone number with which Firm has contracted over the specified quarterly period.
- B. Contact person at the SBSD 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 SBSD firm as it relates to the University's account.

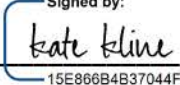
Firm's failure to provide SBSD reports on a quarterly basis which contain the information required by this section and/or Firm's failure to comply with the plan for utilizing SBSD businesses submitted by Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to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

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

VIRGINIA COMMONWEALTH UNIVERSITY

By: 
EE6DA7427C67468...
Name: John McHugh
Executive Director, Office
of Procurement Services
Title: _____

SGA AL HOLDINGS, LLC DBA ZURI GROUP, LLC

By: 
15E866B4B37044F...
Name: Kate Kline
Title: President

Date: 7/1/2025

Date: 6/27/2025

ATTACHMENT A

VIRGINIA COMMONWEALTH UNIVERSITY GENERAL CONTRACTUAL PROVISIONS

- A. **COMPLIANCE.** Firm¹ will comply with all applicable laws, regulations, industry codes, and guidance in performing services under this Agreement.
- B. **CONFLICT OF INTERESTS.** The Firm attests represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 *et seq* of the *Code of Virginia (Virginia Code)*, the Virginia Ethics In Public Contracting Act (*Virginia Code § 2.2-4367 et seq*), the Virginia Governmental Frauds Act (*Virginia Code § 18.2-498.1 et seq*) or any other applicable law or regulation. Should circumstances change, the Firm will notify the University of any potential conflict of interests prohibited under law.
- C. **INDEPENDENT CONTRACTOR:** Firm is not an employee of the University, but is engaged as an independent contractor. The Firm will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to the Firm's performance of this Agreement. Nothing in this Agreement will be construed as authority for the Firm to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.
- D. **WAIVER OF CLAIMS:** No waiver of any right will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right will prevent a later exercise of such or any other right.
- Notwithstanding anything contained herein to the contrary, VCU is an agency of the Commonwealth of Virginia and as such, pursuant to *Virginia Code § 2.2-514*, cannot waive or settle legal claims that VCU may have against another party nor may VCU bestow any right or obligation that is beyond the duly granted authority of the signatory to bestow or incur on behalf of the Commonwealth of Virginia.
- E. **NONDISCRIMINATION/ANTI-DISCRIMINATION:** During the performance of this Agreement, Firm will comply with the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975 (VFECA), as amended, the Virginians With Disabilities Act (VDA), the Americans With Disabilities Act (ADA) and § 9 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth (Governing Rules)*.

If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Governing Rules § 36*)

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

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

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

nondiscrimination clause.

- b. The Firm, in all solicitations or advertisements for employees placed by or on behalf of the Firm, will state that such Firm is an equal opportunity employer.
 - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 - d. If Firm employs more than five employees, Firm shall (i) provide annual training on Firm's sexual harassment policy to all supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post Firm's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth of Virginia that Firm owns or leases for business purposes and (b) Firm's employee handbook.
2. The Firm will include the provisions of a through d above in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

- F. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Firm warrants and certifies that it does not and will not during the performance of this contract employ unauthorized alien workers, as defined by the federal Immigration Reform and Control Act of 1986 or violate any other provisions of the Act.
- G. **ANTITRUST:** By entering into a contract, Firm conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under this Agreement.
- H. **NON-APPROPRIATION:** Funding for any Agreement between the University and a Firm is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated by the University effective the last day for which appropriated funding is available.
- I. **VIRGINIA MINIMUM WAGE ACT:** All Firms must comply with the state and federal minimum wage requirements. Every Firm shall pay to each of their employee's wages at a rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum wage as prescribed by Virginia Minimum Wage Act (Virginia Code § 40.1-28.8 et seq.) and the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.), respectively. For details on minimum wage law requirements, contact the Department of Labor & Industry at: <https://doli.virginia.gov>.
- J. **WORKERS' COMPENSATION:** Firm will (i) obtain and maintain a workers' compensation policy for all employees in accordance with applicable law, and (ii) comply with all federal and/or state laws and regulations pertaining to Workers' Compensation requirements for insured or self-insured programs.
- K. **DRUG-FREE WORKPLACE:** Firm, its agents and employees are prohibited, pursuant to *Governing Rules* §11, and the Commonwealth of Virginia, Department of Human Relations Management Policy No. 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, the Firm agrees to (i) provide a drug-free workplace for the Firm's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Firm's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Firm that the Firm maintains a drug-free workplace; and (iv) includes the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor providing services under this Agreement.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection

with a specific agreement awarded to a Firm, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

- L. **VIRGINIA FOIA:** Nothing contained herein is intended to limit VCU's compliance with the Virginia Freedom of Information Act ("VFOIA"). For clarity, agreements and pricing between VCU and its vendors are not considered to be exempt from VFOIA requests.
- M. **STATUTORY DAMAGES:** VCU is not authorized to waive damages granted or otherwise available by statute.
- N. **SOVEREIGN IMMUNITY:** VCU is an agency of the Commonwealth of Virginia and is afforded the protection of sovereign immunity under Virginia law. Any claims against VCU or the Commonwealth are subject to the requirements established under Virginia law for bringing such claims against VCU or the Commonwealth, including the Virginia Tort Claims Act (Virginia Code §§ 8.01-195.1 et seq.) and other applicable statutes relating to claims against the Commonwealth or its agencies. Notwithstanding any other provision, nothing in this Agreement shall be deemed to be or construed as a waiver of VCU's or the Commonwealth's sovereign immunity, or any other applicable requirements under Virginia law for bringing claims against VCU or the Commonwealth. The total cumulative liability of the University, its officers, employees, and agents in connection with this Agreement or in connection with any goods, services, actions or omissions relating to this Agreement, shall not under any circumstance exceed payment of the maximum purchase price.
- O. **REPRESENTATIONS AND WARRANTIES:** All representations and warranties made by the University are made to the best of its knowledge at the time the representation or warranty is made. University will use its best efforts to comply with all conditions and restrictions on its accounts and the services provided hereunder.
- P. **INFORMATION TECHNOLOGY ACCESS:** All electronic and information technology procured through this agreement must meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as amended and is viewable at <http://www.section508.gov>. If requested, the Firm must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. Additionally, in accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

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

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

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

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

If requested, the Firm must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration. The requirements of this Paragraph shall be

construed to achieve full compliance with the Information Technology Access Act, *Virginia Code* §§ 2.2-3500 through 2.2-3504.

- Q. **CONTRACTUAL CLAIMS PROCEDURE:** *Governing Rules § 53* (similar to the Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments) requires Firms with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the Firm's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

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

1. Firm must provide the written claim to:
Assistant Director of Purchasing
Virginia Commonwealth University
Office of Procurement Services
912 West Grace Street
Box 980327
Richmond, Virginia 23298
2. Although Firm may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section 1 above, Firm must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Purchasing if it wishes to pursue its claim.
3. Upon receiving the written claim, the Assistant Director of Purchasing will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Firm. If such discussion is to be held, the Assistant Director of Purchasing will contact Firm and arrange such discussion. The manner of conducting such discussion will be as Assistant Director of Purchasing and Firm mutually agree.
4. The Assistant Director of Purchasing will mail his or her decision to Firm within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.
5. Firm may appeal the decision to:
Executive Director of Procurement Services
Virginia Commonwealth University
Office of Procurement Services
912 West Grace Street
Box 980327
Richmond, Virginia 23298

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

6. Upon receiving the written appeal, the Executive Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Firm. If such discussion is to be held, the Executive Director of Procurement Services will contact Firm and arrange such discussion. The manner of conducting such discussion will be as the Executive Director of Procurement Services and the Firm mutually agree.
7. The Executive Director of Procurement Services will mail his or her decision to Firm within 60 days after the receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

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

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

- S. **PURCHASING MANUAL.** This Agreement is subject to the provisions of the Commonwealth of [Virginia Purchasing Manual for Institutions of Higher Education and Their Vendors \(Purchasing Manual\)](#) and any subsequent revisions, which is available on Procurement and Supplier Diversity Services website at: <https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf>.
- T. **REALSOURCE REGISTRATION:** The Firm is required to register in VCU's source-to-pay platform, RealSource, upon signing an agreement with VCU. For information on registering, visit realsource.vcu.edu. Registration is free, and registered vendors shall have access to purchase order, invoice, and payment information. Firm is responsible for the security of its RealSource portal account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of the Firm's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to the Firm's failure to update or protect its account information. If this is a cooperative procurement, this clause shall apply to orders placed by VCU only.
- U. **ORDERING PROCESS.** The University does not place verbal orders for Goods and Services. The University may only place orders for the Goods and Services by issuing a formal written Purchase Order in advance of Firm's provision of the Goods and Services. Accordingly, at the University's request, the Firm will issue a proposal/quotation listing the Goods and Services desired by the University and the corresponding fees and/or fee estimates. After any necessary discussions and/or revisions, the University will issue a corresponding Purchase Order for a specified fee amount. This specified fee amount cannot be exceeded by the Firm unless a new formal written Purchase Order or Purchase Order revision is issued by the University authorizing a specific additional fee amount. Under no circumstances does the University authorize the Firm to provide the Goods and Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If the Firm provides Goods and Services prior to receipt of a formal written Purchase Order, or incurs costs in excess of authorized purchase order fee amounts, it does so at its own risk.
- V. **eVA REGISTRATION:** The eVA Internet electronic procurement solution is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal, found at www.eva.virginia.gov, is a gateway for Firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA and all Firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution. Firm is required to register in the eVA Internet e-procurement solution as a condition of award and remain eVA registered during the term of this Agreement.
- Firm shall be responsible for the security of its eVA account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of Firm's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to Firm's failure to update or protect its account information.
- W. **eVA FEES:** Unless the procured services are exempt pursuant to eVA standard, Firm will be subject to an eVA transaction fee, for which Firm will be invoiced by Commonwealth of Virginia, Department of General Services. The Commonwealth shall assess eVA transaction fees as specified below for each order resulting from this Agreement. The Vendor transaction fee (which is subject to change) is:
1. DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 2. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- The specified Vendor transaction fee will be invoiced by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and the invoice is payable 30 days after the invoice date.
- Firm shall be prohibited from recouping or seeking reimbursement of the eVA fee by invoicing the University for the fee.***
- X. **SMALL BUSINESS AND SUPPLIER DIVERSITY (SBSD) CERTIFIED BUSINESSES REPORTING:** If Firm has a SBSD plan or is required to have a SBSD plan, the Firm will identify and fairly consider SBSD Firms for subcontracting opportunities when qualified SBSD firms are available to perform a given task required under this Agreement. Firm will submit a quarterly SBSD business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January.

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

VCU SBSB Reporting
swamreporting@vcu.edu

The quarterly SBSB business reports will contain the following information:

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

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

- Y. **FEDERAL PROVISIONS:** For Contracts funded by a U.S. Government grant or contract, the following provisions found in [Appendix II of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule \(2 CFR Part 200, et al\)](#) shall be incorporated and made a part of this Contract.
- Z. **LIMITATION OF LIABILITY:** Firm shall be liable for the direct damages caused by the negligence of itself, its officers, employees, and agents in connection with this Agreement or any goods, services, actions, or omissions relating to this Agreement.
- AA. **GRAMM-LEACH-BLILEY ACT:** If applicable, the Firm shall comply with the Act by implementing and maintaining appropriate safeguards to protect and prevent unauthorized release of student, faculty and staff nonpublic information. Nonpublic information is defined as social security numbers, or financial transactions, bank, credit, and tax information.
- BB. **INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR):** If Firm is providing any items, data or services under this order that are controlled by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR), it must notify (by sending an email to exportctrl@vcu.edu and receive prior written authorization from, the University's Export Compliance Program before delivery. The notification provided by the supplier shall include the name of the Virginia Commonwealth University point of contact, identify each ITAR-controlled commodity, provide the associated U.S. Munitions List (USML) category number(s), and indicate whether or not the determination was reached as a result of a commodity jurisdiction or self-classification process. Firm agrees that if it fails to notify the University that it is providing ITAR-controlled items, data or services, it shall reimburse the University for any fines, legal costs and other fees imposed by the above-named regulatory agency for any violation of export controls regarding the provided items, data or services.
- CC. **COOPERATIVE PROCUREMENT / USE OF AGREEMENT BY THIRD PARTIES:** It is the University's intent to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institution, or any University-related foundation (Additional Users) may access this Agreement if authorized by Firm.

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

- DD. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Firm desires to subcontract some part of the work specified herein, the Firm shall furnish the University with the names, qualifications and experience of their proposed subcontractors. The Firm shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.
- EE. **VCU CAMPUS COMPLIANCE:** Any Firm personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use, and conduct within such facilities. Please note that VCU is a smoke and tobacco-free campus ([VCU Smoke and Tobacco-Free Campus Policy](#)). In addition, all Firm employees authorized to work at VCU must obtain a VCU identification card. Information on obtaining a card is available at <http://vcucard.vcu.edu/>. Firm's employees must wear their VCU identification when they are on VCU property.
- FF. **CRIMINAL BACKGROUND INVESTIGATION:** If Firm employees and agents will be on the VCU campus, or have access to protected data as defined herein, Firm must comply with the following: Firm shall ensure that its employees, full-time or part-time, including newly hired, re-hired, seasonal, and/or temporary, who may have access to VCU confidential or proprietary information, or data about VCU personnel or students, have passed a criminal background check pursuant to the *Virginia Code* § 2.2-1201.1. Criminal background checks shall comply with the standards set forth in VCU's employment policies found at:
- <https://policy.vcu.edu/doctract/documentportal/08DA32A63EDBCEAAB4962445672CE290>
- Specifically, Firm shall ensure an investigation is conducted by a third-party vendor utilizing courthouse records and national databases to obtain records within the past seven (7) years. Convictions related to drugs, violence and/or sexual behavior are generally considered job related due to the nature of the VCU environment and the need to provide reasonable levels of protection for students, patients, employees, visitors, and institutional resources.
- GG. **INTELLECTUAL PROPERTY RIGHTS/DISCLOSURE:** Unless expressly agreed to the contrary in writing, all goods, products, materials, documents reports, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by Firm (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. The Parties agree that any such intellectual property created as a result of this agreement shall be deemed as a Work-for-Hire, as defined under federal copyright law. Firm warrants to the University that the University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising from this Agreement and will have full ownership and beneficial use thereof free and clear of claims of any nature by any third party including without limitation copyright or patent infringement claims.
- Firm will execute any assignments or other documents needed for the University to perfect such rights. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.
- HH. **BRAND STANDARDS:** Firm warrants that any Creative Work produced for the University (1) will comply with the University's brand standards and (2) in its end application, will fit the visual look and feel of the overall brand aesthetic, brand concept, color palette, visual effects, photographic and video style standards, and make correct use of all marks including logos and identity components. Firm agrees that the University, in its sole discretion, will determine Firm's compliance with this Provision. Creative Work includes, but is not limited to: websites, applications, electronic communications, newsletters, advertisements, mailings, magazines, and other communication materials (digital and print) produced for the University. For additional guidance, Firm should consult the UVA Brand Guidelines at <https://brand.vcu.edu/vcu-university/guidelines> (requires registration) or contact University Trademark and Licensing (trademarks@vcu.edu.)
- II. **TRADEMARKS/LOGOS AND PROMOTIONAL ACTIVITY:** The University retains all rights, title and interest to its trademarks, logos and other intellectual property. Firm shall obtain approval in writing from the VCU Division of University Relations prior to use of any VCU marks, name, or logos. During the Term of the Agreement, Firm may reference the University as a customer in sales and marketing materials and public statements ("Promotional

Materials”), provided such Promotional Materials do not include opinions explicitly or implicitly attributed to the University about the quality of the goods and/or services provided to the University. In no event shall Firm request that the University or any University employee endorse Firm or Firm’s goods and/or services. Promotional Materials may include the name “Virginia Commonwealth University” and VCU’s approved institutional logo solely to identify accurately the University as an entity to whom Firm provides goods and/or services. Furthermore, the University grants Firm a limited, nonexclusive license to display the University’s trademarks/logos solely as they are made available to Firm in connection with Firm’s goods and/or services.

- JJ. **MARKETING AT VCU:** The University encourages Firm to appropriately and specifically market itself to applicable end-using University departments that may be interested in Firm’s goods and/or services. However, Firm shall not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that Firm engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement.
- KK. **FAILURE TO DELIVER GOODS OR SERVICES:** In case of failure to deliver goods or services in accordance with the Agreement terms and conditions, VCU, after oral or written notice, may procure them from other sources and hold the Firm responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which VCU may have.
- LL. **SHIPPING:** Firm shall ship all goods FOB (Freight on Board) Destination at the actual freight rate based upon the actual weight of the goods to be shipped. All prices unless otherwise specified are FOB Destination, Freight Prepaid and Allowed.
- MM. **INSTALLATION DELIVERY AND STORAGE:** If applicable, it shall be the responsibility of the Firm to make all arrangements for delivery, unloading, receiving and storing materials in a VCU building during installation. VCU will not assume any responsibility for receiving these shipments. Firm shall check with VCU and make necessary arrangements for security and storage space in the building during installation.
- NN. **TESTING AND INSPECTION:** To the extent applicable, VCU reserves the right to conduct any testing/inspection it may deem advisable to ensure goods and services conform to the specifications/Agreement.
- OO. **TAXES:** Firm acknowledges all sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this Agreement shall usually be free of Federal excise and transportation taxes. The Commonwealth’s excise tax exemption registration number is 54-73-0076K.
- PP. **AUDIT:** The Firm shall retain all books, records, and other documents relative to this Agreement for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- QQ. **FAVORED CUSTOMER:** Firm represents that the prices, terms, warranties, and benefits are comparable to or better than the equivalent terms being offered by the Firm to any present customer.
- RR. **ADDITIONAL GOODS AND SERVICES:** The University reserves the right to have the Firm provide additional goods and/or services that may be required by the University during the Term of this Agreement. Any such goods and/or services will be provided under the same terms and conditions of this Agreement. Such additional goods and services may include other products, components, accessories, subsystems or services provided by the Firm. These additional goods and services will be provided to the University at Favored Customer pricing.
- SS. **EXTRA CHARGES NOT ALLOWED:** The Agreement price shall reflect all fees to be incurred for the performance of the Agreement, including all applicable freight and installation charges. Any additional fees that arise during the performance of the Agreement shall only be paid if approved by the University prior to incurring such fees.
- TT. **INDEMNIFICATION:** Firm agrees to indemnify, defend, and hold harmless VCU, the Commonwealth of Virginia, and their officers, employees and agents from any claim, damage, liability, injury, expense or loss, including defense costs and attorneys’ fees, arising from Firm’s negligence under this Agreement. Accordingly, VCU shall promptly

notify Firm of any claim or action brought against VCU in connection with this Agreement. Upon such notification, and at the request and direction of VCU and/or the Office of the Attorney General, Firm will immediately defend any such claim or action pursuant to the provisions and requirements of Virginia Code § 2.2-514.

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

- VV. **FERPA:** To the extent that University provides to Firm any identifiable student information, including student address, phone number and email address, the University hereby designates Firm as a school official with a legitimate educational interest in using such student information, and Firm agrees to use such information only for the purpose of fulfilling its obligations under this Agreement. Firm 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. Firm 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).

- WW. **LICENSE REQUIREMENTS:** Certain statutes and regulatory agencies require that some Firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. It is Firm's responsibility to comply with the rules and regulations issued by the appropriate regulatory agencies, and possess and maintain the appropriate licenses if applicable for the Goods and/or Services to be provided under this Agreement. A copy of any such applicable license and/or permit must be furnished upon request to the University or VASCUPP member institution. For example, if Firm will be providing removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the Firm, must possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of this Agreement.

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

- YY. **APPLICABLE LAW AND COURTS:** This Agreement shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia without regard to choice of law principles. The Parties agree that all disputes arising under this Agreement shall be brought in the state or federal courts located in Richmond, Virginia. To the

extent any provision of the Agreement is prohibited by Virginia law, or is otherwise not authorized by Virginia law, due to VCU's status as an agency of the Commonwealth of Virginia, such provision is null and void. Each party shall be responsible for its own legal fees and costs unless otherwise ordered by a court of law.

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

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

- a) evidence demonstrating: (i) the unit price paid by Firm as of the date of award for the good or raw material used to furnish the goods to VCU under this Agreement, (ii) the applicability of the tariff to the specific good or raw material, and (iii) Firm's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow VCU to verify that the tariff is the cause of the price change;
- b) a certification signed by Firm that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by VCU at a lower cost from a different source located outside of the country against which the tariff has been imposed;
- c) a certification signed by Firm that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Firm would otherwise be unable to perform under this Agreement without such price increase; and
- d) as requested by VCU, written instructions authorizing VCU to request additional documentation from Firm's suppliers to verify the information submitted by Firm.

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

- a) During the Term and for five (5) years after the termination of this Agreement, Firm shall retain, and VCU and its authorized representatives shall have the right to audit, examine, and make copies of, all of Firm's books, accounts, and other records related to this Agreement and Firm's costs for providing goods to VCU, including, but not limited to those kept by the Firm's agents, assigns, successors, and subcontractors.
- b) Notwithstanding anything to the contrary in this Agreement, VCU shall have the right to terminate this Agreement for VCU's convenience upon 15 days' written notice to Firm.

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

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

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

Any Firm-requested changes must be submitted in writing and are subject to approval by the Office of Procurement Services. Firm may, at any time, upgrade to either the Virtual Card or Premium ACH (Paymode-X) payment method by coordinating with Bank of America or Paymode-X. These upgrades do not require an amendment to the

Agreement but VCU reserves the right to reject or deny a change deemed not in the best interest of the University.

BBB. MODIFICATION OF THE AGREEMENT:

1. The parties may agree to modify the scope of the Agreement. An increase or decrease in the price of the Agreement resulting from such modification shall be agreed by the parties as a part of their written Agreement to modify the scope of the Agreement.
2. The Purchasing Agency may order changes within the general scope of the Agreement at any time by written notice to the Firm. Changes within the scope of the Agreement include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Firm shall comply with the notice upon receipt. The Firm shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings.
3. Material, substantive modifications, changes, and amendments to the Agreement must be in a writing executed by authorized representatives of each party.

CCC. TERMINATION OF AGREEMENT:

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

DDD. ENTIRE AGREEMENT: This is the entire agreement between the University (including University employees and other End Users) and Firm. The Agreement shall not be assignable by Firm in whole or in part without the written consent of the University. In the event that Firm enters into terms of use agreements or other agreements or understanding, whether electronic, click-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 Agreement shall apply. This Agreement may be executed in counterparts, each of which will be deemed an original, and both of which taken together will constitute one and the same document. Electronically transmitted signatures will be deemed originals for all purposes relating to the agreement.

ATTACHMENT B SPECIFIC CONTRACTUAL PROVISIONS

- B. **DATA PROTECTION:** Sensitive, non-public "VCU Data" is strictly regulated by state or federal law. Such data includes but is not limited to: business, administrative and financial data, intellectual property, and patient, student and personnel data. If the Firm providing goods or services to VCU will receive, create, or come into non-incidental contact with VCU Data, the Firm agrees to abide by the terms and conditions of the Data Protection Addendum ("DPA") shown here <https://procurement.vcu.edu/for-suppliers/>. The Data Protection Addendum may be updated from time to time and it is the Firm's obligation to review the Data Protection Addendum in effect at the time of its provision of goods or services to VCU. Further, if the Firm providing goods or services to VCU will receive, create, or come into non-incidental contact with patient or VCU health plan participant Protected Health Information as that term is defined in 45 C.F.R. § 160.103, the Firm may be a Business Associate, and agrees to abide by the terms and conditions of the Business Associate Addendum in addition to the Data Protection Addendum should a determination be made that the Firm is a Business Associate.

- D. **ORDERING PROCEDURES:** Goods and/or Services will be ordered in the manner described in this section. The University makes no guarantee as to the volume of business that may be provided under this Agreement.

A proposal for Goods and/or Services must be specifically requested of the Firm by a University department. When such Goods and/or Services are specifically requested, Firm will prepare a proposed statement of work. Additional contractual provisions may not be introduced in the proposed statement of work and the statement of work may not be marked as proprietary or confidential. Statements of work will be used solely to describe the personnel, services, deliverables, and applicable fees, and will be mutually agreed upon by the University and Selected Firm. **The University will not be required to sign or otherwise execute the statements of work.**

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



VCU

Attachment C Data Protection Addendum

FIRM¹: SGA AL Holdings, LLC DBA Zuri Group LLC

This Data Protection Addendum (“Addendum”) is by and between **Virginia Commonwealth University** (“VCU”) and the **Firm** (each a “Party” and collectively the “Parties”). It is applicable only in those situations where the Firm provides goods or services under which necessitate that the Firm create, obtain, transmit, use, maintain, process, or dispose of VCU Data² (as defined in the Definitions Section of this Addendum) in order to fulfill its obligations to VCU.

1. DEFINITIONS

- a. “End User” means an individual authorized by VCU to access and use the Services provided by the Firm under this agreement.
- b. “Protected VCU Data” includes all data defined as Highly Sensitive, Sensitive, or Internal Use data that is not intentionally made generally available by VCU on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student, and personnel data.
- c. “Securely Destroy” means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88, REV 1 guidelines relevant to data categorized as high security.
- d. “Security Breach” means the unauthorized access, use or disclosure that compromises or threatens to compromise the confidentiality, integrity, or availability of VCU Data
- e. “Services” means any goods or services acquired by VCU from the Firm.
- f. “VCU Data” includes Protected VCU Data and any other information that is created, possessed or used by VCU or is intentionally made generally available by VCU on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student, and personnel data.
- g. "Audit" includes or may include a chronological record that reconstructs and examines the sequence of activities surrounding or leading to a specific operation, procedure, or event in a security-relevant transaction from inception to final result.

2. RIGHTS AND LICENSE IN AND TO VCU DATA

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

¹ The term “Firm” shall have the same meaning and be interchangeable with the terms “Vendor”, “Supplier” and/or “Contractor” as such terms may be used/referenced in this Addendum or the underlying agreement.

² If the Firm providing goods or services to VCU will receive, create, or come into non-incidental contact with patient or VCU health plan participant Protected Health Information (PHI) as that term is defined in 45 C.F.R. § 160.103, the Firm may be a Business Associate, and agrees to abide by the terms and conditions of the Business Associate Addendum in addition to the Data Protection Addendum should a determination be made that the Firm is a BAA.

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

3. DATA PRIVACY

- a. Firm will use VCU Data only for the purpose of fulfilling its duties under this agreement and will not share such data with or disclose it to any third party without the prior written consent of VCU, except as required by this agreement or as otherwise required by law.
- b. Protected VCU Data will not be stored outside the United States without prior written consent from VCU.
- c. Firm will provide access to VCU Data only to its employees and subcontractors who need to access the data to fulfill Firm obligations under this agreement. Firm will ensure that employees who perform work under this agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this agreement.
- d. The following provision applies only if Firm will have access to VCU's education records as defined under the Family Educational Rights and Privacy Act (FERPA): The Firm acknowledges that for the purposes of this agreement it will be designated as a "school official" with "legitimate educational interests" in VCU education records, as those terms have been defined under FERPA and its implementing regulations, and the Firm agrees to abide by the limitations and requirements imposed on school officials. Firm will use the education records only for the purpose of fulfilling its duties under this agreement for VCU's and its End User's benefit, and will not share such data with or disclose it to any third party except as provided for in this agreement, required by law, or authorized in writing by VCU.

4. DATA SECURITY, INTEGRITY, AND CONFIDENTIALITY

- a. Firm will take reasonable measures, including the use of industry standard administrative, technical, and physical controls, such as redundant backups, access control and auditing, to protect VCU Data to ensure the integrity and availability of VCU Data against deterioration or degradation of data quality and authenticity. The Selected Firm will be responsible during the terms of this agreement, unless otherwise specified elsewhere in this agreement, for converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.
- b. Firm will store and process VCU Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, such as network and system protection, access controls, and security auditing and monitoring, and to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will ensure the confidentiality and overall security of VCU Data, and be no less protective than those used to secure Firm's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, Firm warrants that all electronic VCU Data will be encrypted in transmission (including via web interface) in accordance with industry best practices in data encryption.
- c. If the Firm stores, transmits, or processes Protected VCU Data as part of this agreement, the Firm warrants that the information will be stored in accordance with the practices and controls stated in the latest version of National Institute of Standards and Technology Special Publication 800-53 Moderate or the International Organization for Standardization and the International Electrotechnical Commission 27002 (ISO/IEC 27002).
- d. Firm will use reasonable, appropriate industry-standard and up-to-date security tools and technologies in providing Services under this agreement.

5. EMPLOYEE BACKGROUND CHECKS AND QUALIFICATIONS

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

6. SECURITY BREACH

- a. Response. Within 48 hours of a Security Breach, or of circumstances that are reasonably understood to suggest an actual or suspected Security Breach of VCU Data, Firm will notify VCU consistent with applicable state or federal laws, fully investigate the incident, and cooperate fully with VCU's investigation of and response to the incident. Except as otherwise required by law, Firm will not provide notice of an actual or suspected Security Breach directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from VCU.
- b. Liability. If Firm must under this agreement create, obtain, transmit, use, maintain, process, or dispose of Protected VCU Data, the following provisions apply:
 - 1) Firm will reimburse VCU in full for all costs not covered by vendor's insurance incurred by VCU in investigation and remediation of any Security Breach caused by Firm, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Protected VCU Data exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach.
 - 2) the Firm will for the duration of the term of the agreement, maintain at least \$5 million Cyber Liability coverage with insurance companies that hold at least an A- financial rating with A.M. Best Company.
 - 3) VCU must be named as an Additional Insured on the Cyber Liability Insurance, and the proper name is "The Commonwealth of Virginia, and Virginia Commonwealth University, its officers, employees and agents." Upon VCU's request, the Selected/Firm Vendor will provide a Certificate of Insurance (COI).
 4. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ADDENDUM OR ELSEWHERE IN THE UNDERLYING AGREEMENT, FIRM'S TOTAL AGGREGATE LIABILITY UNDER THIS ADDENDUM, INCLUDING ANY AN ALL REIMBURSEMENT OR INDEMNIFICATION OBLIGATIONS FOR SECURITY BREACHES UNDER THIS ADDENDUM OR ELSEWHERE IN THE UNDERLYING AGREEMENT SHALL NOT, IN THE AGGREGATE, TWO TIMES (2X) THE SERVICE FEES ACTUALLY PAID BY VCU TO FIRM UNDER THIS ADDENDUM OR THE UNDERLYING AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE THE FIRST CLAIM IS MADE AGAINST CLIENT.

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

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

8. DATA TRANSFER UPON TERMINATION OR EXPIRATION

- a. Upon termination or expiration of this agreement, Firm will ensure that all VCU Data are securely returned or destroyed as directed by VCU in its sole discretion. Transfer to VCU or a third party designated by VCU shall occur within a reasonable period of time, and without significant interruption in service. Firm shall

ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of VCU or its transferee, and to the extent technologically feasible, that VCU will have reasonable access to VCU Data during the transition.

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

9. AUDITS

- a. VCU reserves the right in its sole discretion to perform audits of Firm at VCU's expense to ensure compliance with the terms of this agreement. The Firm shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which the Firm must create, obtain, transmit, use, maintain, process, or dispose of VCU Data.
- b. If the Firm must under this agreement create, access, obtain, transmit, use, maintain, process, or dispose of Protected VCU Data or financial or business data which has been identified to the Firm as having the potential to affect the accuracy of VCU's financial statements, Firm will at its expense complete and keep up-to-date the latest Higher Education Collaborative Vendor Assessment Toolkit (HECVAT) Full Version questionnaire; conduct or have conducted, at least annually, a security audit by a third party with audit scope and objectives deemed sufficient by VCU, which attests the Firm's security policies, procedures, and controls; vulnerability scan by a third party of Firm's electronic systems and facilities that are used in any way to deliver electronic services under this agreement; assessments of the Firm's own service providers ("subservice providers") that are used by the firm to provide services to VCU; and formal penetration test by a third party of Firm's electronic systems and facilities that are used in any way to deliver electronic services under this agreement.
- c. Additionally, the Firm will provide VCU upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under this agreement. VCU may require, at VCU expense, the Firm to perform additional audits and tests, the results of which will be provided promptly to VCU.

10. COMPLIANCE

- a. Firm will comply with all applicable laws and industry standards in performing services under this agreement. Any Firm personnel visiting VCU's facilities will comply with all applicable VCU policies regarding access to, use of, and conduct within such facilities. VCU will provide copies of such policies to Firm upon request.
- b. Firm warrants that the service it will provide to VCU is fully compliant with all state and federal laws, regulations, industry codes, and guidance that may be applicable to the service, which may include:
 - 1) any applicable national, federal, state or local law, rule, directive or regulation relating to the privacy of personal information, including, without limitation, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, and its implementing regulations ("FERPA), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Privacy and Security Rules issued

thereunder, the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), the Financial Modernization Act of 1999 ("Gramm-Leach-Bliley Act"), the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act, the Americans with Disabilities Act, Section 508 of the Rehabilitation Act (29 U.S.C. 794d, as amended, and the Virginia Consumer Data Protection Act;

- 2) any privacy policy or practice applicable to any personal information that Customer or any User accesses, uses, collects, or maintains hereunder, including, without limitation any practice required in connection with the processing of credit card data, including the Payment Card Industry Data Security Standards ("PCI-DSS"); and
 - 3) Federal Export Administration Regulations, Federal Acquisitions Regulations, Defense Federal Acquisitions Regulations and Department of Education guidance.
- c. If PCI-DSS is applicable to the Firm service provided to VCU, the Firm agrees to: Store, transmit, and process VCU Data in scope of the PCI-DSS in compliance with the PCI-DSS; and Attest that any third-party providing services in scope of PCI-DSS under this agreement will store, transmit, and process VCU Data in scope of the PCI-DSS in compliance with the PCI-DSS; and Provide either proof of PCI-DSS compliance or a certification (from a recognized third-party security auditing firm), within 10 business days of the request, verifying Firm/Vendor and any third party who stores, transmits, or processes VCU data in scope of PCI-DSS as part of the services provided under this agreement maintains ongoing compliance under PCI-DSS as it changes over time; and Store, transmit, and process any VCU Data in scope of the PCI DSS in a manner that does not bring VCU's network into PCI-DSS scope; and Attest that any third-party providing services in scope of PCI-DSS under this agreement will store, transmit, and process VCU Data in scope of the PCI-DSS in a manner that does not bring VCU's network into PCI DSS scope.

11. SURVIVAL

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