



University of Maryland University College

## UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE

### REQUEST FOR PROPOSAL # 91374 FOR

### ONLINE EMPLOYEE REWARDS PROGRAM

ISSUE DATE: FEBRUARY 2, 2016

**IMPORTANT NOTE:** Prospective proposers who have received this document from a source other than the Issuing Office should immediately contact the Issuing Office and provide their name and mailing address in order that amendments to the Request for Proposal or other communications can be sent to them. Any Prospective Proposer who fails to notify the Issuing Office with this information assumes complete responsibility in the event that they do not receive communications from the Issuing Office prior to the closing date.

UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE  
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Adelphi, Maryland 20783  
[www.umuc.edu](http://www.umuc.edu)

**ONLINE EMPLOYEE REWARDS PROGRAM**

**THE UNIVERSITY OF MARYLAND, UNIVERSITY COLLEGE**

**RFP #91374**

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**SOLICITATION SCHEDULE  
ONLINE EMPLOYEE REWARDS PROGRAM  
RFP 91374**

Issue Date:	February 2, 2016
Questions Regarding Solicitation Due:	February 11, 2016
<b>Technical Proposal Due:</b>	<b><u>TO BE CONSIDERED TIMELY, MUST BE SUBMITTED ELECTRONICALLY</u> by February 24, 2016 on or before 11:59 pm EDT as noted on the Proposer’s ‘sent’ email to the Issuing Office</b>
Anticipated Date of Notification following the Initial Evaluation regarding shortlist:	March 9, 2016
<b>Demonstration/Discussion Meetings:</b>	<b>Week of March 14 to 18, 2016. To accommodate UMUC’s global community, these sessions will be held via webinars at 7 am EST.</b> (Only shortlisted firms will be invited to these sessions; <b>Proposers should set aside these dates from 7 am to 9 am.</b> )
Anticipated Date of Notification regarding further Shortlist following the Oral Presentation/Discussion Meetings:	By March 22, 2016
<b>Anticipated Price Proposal Due Date:</b>	April 7, 2016 on or before 11:59 p.m. EDT as noted on the Proposer’s “sent” email to the Issuing Office
Anticipated Contractor(s) Selection finalized:	By April 22, 2016
Agreement fully executed with selected Contractor(s):	By April 29, 2016 (Projected)
Contract Commencement:	No later than May 2, 2016 (Projected)
System “Go Live” Completion	Preferably by July 1, 2016, but no later than September 30, 2016

END OF SOLICITATION SCHEDULE

**SECTION I:  
GENERAL INFORMATION/INSTRUCTIONS TO PROPOSERS**

**REQUEST FOR PROPOSALS  
FOR  
UMUC ONLINE EMPLOYEE REWARDS PROGRAM**

**SECTION I:  
GENERAL INFORMATION**

**1. Summary:**

1.1 **Objective.** The University of Maryland University College ('UMUC' or the 'University') is soliciting for proposals for services related to an online employee rewards program that will accommodate its global (Asia, Europe, and USA) workforce of approximately 6800 employees (faculty and staff).

Refer to Section II for more information regarding the Scope of Work.

This solicitation document, as well as all addenda that may be issued, is (will be) posted on UMUC's Electronic Bid Board at [www.umuc.edu/procurement](http://www.umuc.edu/procurement).

1.2 **About UMUC – Serving Busy Professionals Worldwide**

University of Maryland University College (UMUC) specializes in high-quality academic programs that are convenient for busy professionals. Our programs are specifically tailored to fit into the demanding lives of those who wish to pursue a respected degree that can advance them personally and grow their careers. UMUC has earned a worldwide reputation for excellence as a comprehensive virtual university and, through a combination of classroom and distance-learning formats, provides educational opportunities to more than 95,000 students. The university is proud to offer highly acclaimed faculty and world-class student services to educate students online, throughout Maryland, across the United States, and in more than 20 countries and territories around the world. UMUC serves its students through undergraduate and graduate programs, noncredit leadership development, and customized programs. For more information regarding UMUC and its programs, visit [www.umuc.edu](http://www.umuc.edu).

UMUC's mission and core values may be found at:

<http://www.umuc.edu/visitors/about/mission>.

1.3. Procurement of the UMUC Online Employee Rewards Program will consist of a Technical Proposal submittal, Demonstration/Discussion Sessions, and a Price Proposal submittal (see Section 3 for further details). Upon selection of the Online Employee Rewards Program, a UMUC contract (See Appendix C) will be fully executed with the successful firm.

1.4 The University anticipates the award in April, 2016. It is anticipated that the program will 'go live' in July, 2016, but no later than September 30, 2016.

1.5 Refer to Appendix S for the UMUC Solicitation Terms and Conditions.

**2. Issuing Office:**

2.1. The Issuing Office is:

University of Maryland University College  
Office of Strategic Contracting  
3501 University Blvd East  
Administration Building - Suite ADMIN 2344  
Adelphi, MD 20783-8044

Attn: Valerie Rolandelli  
AVP, Strategic Contracting  
Tel : (301) 985-7895  
E-mail: [valerie.rolandelli@umuc.edu](mailto:valerie.rolandelli@umuc.edu)

Or Vera Jones  
Coordinator  
(301) 985-7006  
vera.jones@umuc.edu

2.2 The Issuing Office shall be the **sole** point of contact with the University for the purposes of the preparation and submittal of proposals in response to this solicitation.

**3. Questions and Inquiries:**

All questions and inquiries regarding this procurement are to be directed to the individuals referenced with the Issuing Office above. All such questions and inquiries must be received by the dates established for each phase of the procurement per the Solicitation Schedule. Questions are to be submitted in writing via e-mail to the three people identified in Paragraph 2 above. Inquiries will receive a written reply via an addendum to the Solicitation. Addenda will be sent electronically to all known holders of the Solicitation as well as posted on UMUC's electronic bid board, but without identification of the inquirer.

**4. Pre-Proposal Conference.**

A Pre-Proposal Conference will not be held in conjunction with this procurement.

**5. Addenda Acknowledgment.**

Prospective offerors responding to this RFP must acknowledge the receipt of any, and all, addenda, amendments and/or changes issued. Receipt of the addenda, amendments and/or change issued must be acknowledged in writing by offerors and included in the technical proposal.

## 6. Proposal Closing Date/Due Date and Time

6.1 **Technical Proposal:** The Technical Proposal is to be provided to the Issuing Office in accordance with the Solicitation Schedule. **Technical Proposals are to be submitted electronically attached as one file to an email in PDF format.** **Hyperlinks to software products sent to UMUC's Issuing Office that indicate that the Technical Proposal is posted by the Proposer on an electronic site may be rejected or considered non-responsive if contract terms and conditions (ie. a Click through Agreement) are required to be accepted by UMUC in order to download the Technical Proposal.** By providing to UMUC the Technical Proposal electronically, the Proposer grants the University the unlimited right to generate additional electronic and/or paper copies for distribution solely for the purpose of evaluation and review.

6.2. **LATE PROPOSALS CANNOT BE ACCEPTED.** Proposals are to be in accordance with Paragraph 6.1 above to University of Maryland University College's Issuing Office (see paragraph 2 above.) The time on the 'sent' email from the Proposer will be used to determine timeliness.

6.3 Refer to the Solicitation Schedule and Section III of the RFP for information regarding subsequent submittals during the procurement process.

## 7. Minority Business Enterprises.

Minority participation is important to UMUC and the State of Maryland. State-certified Minority Business Enterprises (MBE) are strongly encouraged to respond to this solicitation notice. If not certified by the Maryland Department of Transportation (MDOT), MBEs are encouraged to initiate certification as soon as possible. For more information on the State's MBE program or questions related to certification, please contact MDOT's Office of Minority Business Enterprise/Equal Opportunity, telephone 800-544-6056 or view the MDOT website <http://www.mdot.state.md.us/mbe/index.html> .

## 8. Contractual Agreement.

The Contract to be entered into as a result of this RFP (the "Contract" or "Agreement") shall be by and between the proposer as Vendor/Contractor and UMUC in the form of an University Contract and shall contain the mandatory provisions included herein in Appendix C as well as any additional terms required by UMUC or the State of Maryland. (Note: The Contract in Appendix C may be revised as the procurement progresses. If this is the case, it is UMUC's intent to issue the revised Contract to the shortlisted Proposers prior to the due date and time for the Price Proposal.) By submitting an Offer (i.e. the firm's Technical and/or Price Proposal, either individually or collectively, is/are considered an Offer), the Vendor/Contractor warrants that they have reviewed Appendix C and will execute a contract a) in substantially the same form and b) with these mandatory terms and conditions upon request by UMUC. The awarded Contractors should not assume that any term and condition of the Contract is negotiable.

The terms and conditions of the Contract shall apply to all goods and services provided. For accounting purposes only, UMUC will also issue a purchase order to the awarded Contractor for services provided under the Contract.

**10. Term of Contract.**

Any contract arising from this RFP action shall commence on the date the contract is executed on behalf of UMUC, or such other date as UMUC and the Contractor shall agree. The term of the contract will be for the scope of work as defined in Section 2 of the solicitation documents, with an implementation go live date anticipated in July 2016 for an initial two-year period through June 30, 2018. Following the Initial Term of the contract, at the sole discretion of UMUC, there will be an option or options for renewal for a period not to exceed a cumulative total of two (2) additional years [“Renewal Term(s)”].

In addition, UMUC at its sole option may discontinue the use of the online employee rewards program and/or the associated services, in whole or in part, of any or all of the vendor(s) at any time during the Initial Term or Renewal Term(s) with 30 days notice with no further obligations to the Contractor and with no penalty. If UMUC elects to discontinue any or all contract(s), a summation of work in progress for the contract will be made and a mutual agreement as to how to finalize this work in progress and/or transition to a new provider of Online Employee Rewards Program for UMUC will be made.

**11. Acceptance of Terms and Conditions.**

By submitting an offer in response to this RFP, an Offeror shall be deemed to have accepted all the terms, conditions, and requirements set forth in this RFP. The RFP including all addenda in total shall be incorporated into the contract by reference.

**12. Proposal and Contract Security**

Not applicable to this procurement.

**13. Confidentiality of University’s and/or Proposers’ Information – Refer to Section 11 and 29 of Appendix S. Please note that per Section 11 of this Appendix, a blanket statement by a Proposer that its entire proposal is confidential or proprietary will not be upheld by UMUC.**

**14. Post-Award Confidentiality**

Refer to Appendix C for the confidentiality obligations of awardee(s) and UMUC.

END OF SECTION I



SECTION II  
SCOPE OF WORK/REQUIREMENTS

SECTION II  
SCOPE OF WORK/REQUIREMENTS

1. UMUC is seeking a vendor that can provide the University with a comprehensive online rewards and recognition system to our global staff and faculty in Europe, Asia and the stateside (US). UMUC has approximately 6800 eligible employees. (See breakdown of employees attached.)
2. The online rewards and recognition vendor must supply:
  - Program to include peer to peer recognition, manager to employee recognition, service award milestones, wellness initiatives, special presidential award nominations, etc.;
  - Online, automated software to manage and support single sign on with SAML security for all employees;
  - Clear, simple and concise reports with the ability for UMUC to manage and control reporting structure;
  - Customization services and product flexibility to fit the needs of UMUC and to appeal to our employees worldwide;
  - Training and continual product support for both overseas and stateside HR administrators along with communication assistance and ideas for encouraging employee participation;
  - Multi-media application from several devices such as: computers, iPads, smartphones, etc.;
  - Acceptable integration with Workday HCM
  - Ability to process and track online orders and provide shipping to international multi-military installations, including international residential addresses as well as APO addresses;
  - Multi-level approval process.
  - The program/product must be capable of integrating with the University's Single Sign On platform via the Security Assertion Markup Language (SAML) protocol, with the program/product acting as a SAML service provider.
3. The selected vendor will be responsible for the implementation, configuration, and integration of the online program. It is anticipated that the program will be accessed through UMUC's Engage As well, the selected vendor must transfer knowledge to the appropriate staff at UMUC so that UMUC can support the program, once implemented, with its own functional and technical staff with minimal, if any, vendor involvement. It is preferable that the vendor's administrative/implementation team be available for onsite meetings at UMUC's locations in Adelphi and/or Largo, Maryland at critical points in the project. There will be no need for vendor travel to Europe or Asia, however, there will be a need to accommodate these time zone differences for meetings that allow UMUC's Europe and/or Asia staff assigned to the project to attend. As a result, multiple meetings (USA, Europe, Asia) regarding the same subject matter may need to be scheduled.

4. UMUC will establish a global project team with appropriate global functional and technical staff resources. The UMUC team will have a project manager who will be responsible for the coordination of the project between UMUC and the selected vendor and who will ensure that the appropriate UMUC staff are available when needed for the project. However, none of the UMUC staff are anticipated to be assigned 100% of the time to the project. It is expected that the selected vendor will be the primary lead on the project with responsibility for the development, management, and execution of the project plan and statement of work with the assistance of UMUC.

**SECTION III**  
**PROCUREMENT PHASES AND EVALUATION PROCESS**

**SECTION III  
PROCUREMENT PHASES AND EVALUATION PROCESS**

**ARTICLE 1  
TECHNICAL PROPOSAL REQUIREMENTS/INITIAL TECHNICAL EVALUATION**

**1. General Proposal Requirements**

**1.1 Transmittal Letter**

A transmittal letter prepared on the Proposer's business stationery must accompany each submittal from the Proposer. The purpose of this letter is to transmit the proposal; therefore, it should be brief, but shall list all items contained within the Proposal as defined below. The letter must be signed by an individual who is authorized to bind the firm to all statements, including services and financial, contained in the proposal.

**1.2 Signing of Forms**

The proposals, if submitted by an individual, shall be signed by the individual; if submitted by a partnership, they shall be signed by such member or members of the partnership as have authority to bind the partnership; if submitted by a corporation, they shall be signed by an officer, and attested by the corporate secretary or an assistant corporate secretary. If not signed by an officer there must be attached a copy of that portion of the by-laws or a copy of a board resolution, duly certified by the corporate secretary, showing the authority of the person so signing on behalf of the corporation.

**2. Technical Proposals/Technical Criteria**

The following information must be furnished in the Technical Proposal per this solicitation. Failure to include any of the items listed below may disqualify your firm's response. Marketing material may be provided, but is to be included as an appendix rather than within the body of the proposal.

The Technical Proposal should be prepared in a clear and concise manner. It should address all appropriate points of this Technical Proposal. It is the Proposer's responsibility to tailor its response to demonstrate its qualifications to perform the scope of work specifically for UMUC. The contents of this volume must address the following items, as indicated below, and additionally, must include the appropriate completed forms or responses as indicated in items 2.1 through 2.8 as listed below. *Offerors must **paginate** the Technical Proposal and are requested to provide separations between the responses to each of the technical criteria.*

In general, proposals submitted in response to this RFP must demonstrate that the proposed firm and, in particular, the project team has:

- Providing online employee rewards programs to global organizations similar to UMUC.
- Substantial experience in online employee rewards programs (experience with higher education institutions preferred).
- Strong management, account representatives and staffing available to the University

- Proven results-oriented background in assisting other clients in mission critical online employee rewards programs and associated services
- Added value the firm brings to the engagement.

**2.1 Executive Summary:** The proposal must begin with an Executive Summary which clearly and concisely summarizes the content of the proposal. This summary is for introductory purposes and will not be part of the evaluation process as the information is to be a summary with the details provided in subsequent proposal contents.

## **2.2 Firm Profile/Firm Experience**

**2.2.1 Firm Profile:** Describe your company, the management and ownership structure and the breadth of services your company provides to include the following elements:

- Agency overview, corporate background, mission statement, and/or philosophy;
- Primary business focus or specialty;
- Headquarters location;
- Location of office(s) that will service UMUC;
- Global Support capabilities;
- Client List/Industries Served;
- Number of years your company has been in business;
- Length of experience in providing online employee rewards programs;
- Client Satisfaction Data;
- Size of company and number of employees by job classification;
- Gross billings of the firm for the last five (5) years;
- The number and names of higher education clients and firm’s industry experience in higher education; (Higher consideration will be given in the evaluation for the firms who have higher education experience.)
- Any other notable facts that may demonstrate your firm’s unique qualifications and aid in the selection process.

## **2.2.2 Similar and Relevant Firm Experience/Firm References**

**-Provide three (3) Firm Experience/Firm References** of similar scope and complexity performed over the last 3 years. **All three (3) projects must be for online employee rewards program implementation engagements. Higher consideration given in the evaluation of proposals if higher education client is provided.**

For each firm experience, provide the following:

- contract title,
- period of performance (years of providing product and/or services),
- dollar amount if this information is confidential, please provide a range such as “between \$100,000 and \$150,000/year”, \$150/employee , etc.,
- description of online employee rewards program provided (number of employees, types of employees, global environment, etc.), and, any narrative that explains the relevancy of the product/engagement to the UMUC requirements.

**-Firm References:** The University will check references of the firm by contacting one or more of the clients provided in item above. Proposers must submit a contact person for each client including name, title and project role, address, email address, and phone number (including extension if applicable) ensuring that the references are current and reachable. The contact provided should be able to speak to the performance of the contractor. The University reserves the right to check any other references including itself, if applicable, even if not provided as such by the Proposer. References will be held in the strictest of confidence by the University.

**NOTE:** References are to be provided in the technical proposal which is due on February 24, 2016, however, firm references will be checked by the University only of the final shortlisted firms as part of the second phase evaluation process. (See note below regarding references for Key Personnel for further information regarding references.)

### **2.3 Description of the Online Employee Rewards Program and associated services:**

Describe how the proposed Online Employee Rewards Program and associated services meets UMUC's requirements outlined in Section II Scope of Work/Requirements. The breadth of rewards available to UMUC employees should be described. As well, indicate whether these requirements are met using the product's base (Out-of-the-Box) functionality *or* enhanced (using add-on modules) functionality. Screen shots may be provided to visually explain some of the system's features and capabilities.

In addition, proposers are to:

- Verify that the program and implementation of the same will work with UMUC's Single Sign On.
- Verify that Proposer can demonstrate compliance with European Union (EU) Data Protection and other international data privacy laws in all of the international UMUC locations.
- Verify that Proposer can demonstrate that the system will be accessible to users who are visually impaired, deaf, hard of hearing and/or have other physical limitations that would impair their use of the system.
- Verify that, upon UMUC request, Proposer can provide a SOC 2, Type 2 report or equivalent.

#### **2.3.1 Pricing Model: Without providing an exact quote:**

**a)** Proposers are to provide a narrative of the various pricing options available for the proposed product (such as "per user", "per employee", "site license", etc.) and associated services (implementation fees, maintenance and support, training/knowledge transfer, professional services, quality assurance testing, etc.)

**b)** Proposers are to provide "best practices" for how the awards redeemed by individual employees are funded by its clients, (including shipping costs.)

**c)** Proposers are to provide "best practices" for procedures/processes that its clients use regarding employer/employee taxes associated with the awards.

**2.3.2 A sample license/subscription agreement should be provided as an appendix to the Technical Proposal.** (Refer to Appendix C and Solicitation Section I, Paragraphs 8 and 10 for UMUC's Mandatory Terms and Conditions which must be included in substantially the same form in the selected vendor's Online Employee Rewards agreement/license.)

## **2.4 Approach to Providing the Services:**

**2.4.1** Using "Section 2: UMUC Requirements" as a guideline, provide a narrative as to the methodologies (including technological tools that will be utilized) that will be used by the firm to provide the required services. The purpose of this narrative is to display full comprehension of the services to be provided and how such services will be provided to the University.

The Proposer is to explain how they intend to provide the required services for the development, management, and execution of the work plan and/or statement of work as well as for the implementation/configuration/integration of the program as well as post-implementation follow-up. The Proposer should include explanations and rationale for their proposed methods. The Proposer should provide any assumptions that they have made regarding the scope of services, a summary of any problems which might be expected, and proposed solutions to those anticipated problems.

Within the narrative, the proposer should address the following:

- Global and USA Support
- Technological capabilities/Troubleshooting/Participant Helpdesk
- Organization readiness/engagement meetings (Leadership and Management)
- Communication Plan Development & Execution (Executive/ Management/ Faculty/ Staff)
- Program design and customization
- Program Implementation & Assistance with maximizing client participation rate
- Data Analysis
- Report generation/communication of the data
- Management Training, Action Planning Options and Associated Support Tools to address key issues identified by the survey (automated)
- Action planning execution

The narrative should demonstrate that the proposer understands both the magnitude and the importance of the requirements by detailing the proposed product/program and associated services for the University. The response should be developed specifically in response to this RFP and to UMUC rather than a collection of generic statements or standard methodologies related to online employee rewards program methodologies or the proposer's services in general.

**2.4.2 Recommended Timeline and Schedule of Tasks:** Provide a recommended timeline of tasks, roles, and responsibilities for the initial set up of the online employee rewards program survey beginning with contract execution (anticipated to be no later than April 29, 2016) through completion of the initial set up by July, 2016 (preferable), but no later than September 30, 2016.



## 2.5. Lead Consultant and Staffing of the Contract:

**2.5.1 Describe the Proposer's proposed staffing** including management and escalation procedures to support UMUC's account. All Key People and their roles who will be assigned to UMUC for this contract should be included. A brief description of each Key Person's qualifications and expertise should be included. (Refer to 2.5.2 below for complete resume requirements.) It is expected by the UMUC that the Lead Consultant will be responsible for the management of all work associated with the resulting contract and will have the capability of pulling in the firm's staff resources as needed. (Identify sub-contractual personnel, if applicable.)

**2.5.2 Key Personnel:** Provide a complete resume on:

- the proposed Lead Consultant, (the person responsible for the management of the relationship between the proposer and the University; the staffing and management of all work associated with the resulting contract, and the University's primary point of contact for this contract), and,
- the proposed Executive-in-Charge (the person responsible for adequate resources being designated for this contract as well as for issue escalation/resolution)

The resume should include:

- a) educational background;
- b) employment history (with dates of employments), including all positions and dates of these positions held with all employers; and
- c) similar contracts information (minimum of three), preferably in the same role as proposed for the UMUC contract. Contracts should be recent (within the last three years) and of similar size, scope, and complexity to this proposed contract. In addition to contact information, please provide the following:
  - a brief statement describing the online employee reward program and/or services provided,
  - the role the person held on the contract;
  - the term of the contract (start and end date), and
  - similarities to the proposed UMUC contract.

**2.5.3 Provide three (3) contract/client references for the Lead Consultant** (name, firm, email address, and phone number, including extension if applicable). Such references should be contract references, not employment references and the contact provided should be able to speak to the performance of the person in the role assigned. References will be held in the strictest of confidence.

**Note regarding References:** Only the final short-listed firms will have their Key Personnel references contacted during the Second Technical Evaluation Phase, however, all firms responding must supply this information within their Technical Proposals submitted on February 24, 2016.

It is imperative that the contact names and phone numbers given for the projects listed be accurate. In addition, the University reserves the right to check other sources available, including itself, if not provided as such by the Proposer. References will be held in the strictest of confidence by the

University. Such references are to be from different contracts; that is, only one reference per contract is allowed.

**NOTE:** By submitting these names (Lead Consultant and Executive in Charge) for consideration, the Proposer is committing these individuals to UMUC for the duration of the contract, if awarded. No personnel changes will be permitted without written authorization from the University via a contract amendment.

## **2.6. Proposal Affidavit**

State Procurement Regulations require that each proposal submitted by a firm include a signed Proposal Affidavit. A copy of this Proposal Affidavit is included in **Appendix A**.

## **2.7. Acknowledgement Of Receipt Of Addenda Form:**

If any addenda to the RFP documents are issued prior to the due date and time for proposals, this form (found in **Appendix A**) is to be completed, signed, and included in the Proposer's Initial Technical Proposal.

**2.8 Acknowledgement of Review of UMUC Sample Master Contract:** Per Section I, Paragraph 8, the Proposer is to warrant that they have reviewed Appendix C and will execute such a contract upon request by UMUC, as may be negotiated. Any exceptions to the UMUC Sample Contract are to be provided in the Technical Proposal. Rationale as to why the exception is being requested as well as alternative language is to be provided. Proposer is to also acknowledge that UMUC is under no obligation to accept such requested exceptions and, as a result of such exceptions, may elect to find the Proposer not susceptible of the award(s) of the Contract(s). (Note: As the procurement progresses, the Sample Contract may be revised. If this occurs, it is the intent of UMUC to issue the final version of the Sample Contract via Addendum to all shortlisted Proposers prior to the due date for the Price Proposals.)

## **3. Initial Technical Proposal Evaluation Procedure**

### **3.1 Evaluation and Selection Committee**

All Technical Proposals received in response to this solicitation will be reviewed and evaluated by an UMUC Evaluation and Selection Committee (“the Committee”). As the procurement progresses, the Committee may seek input from other appropriate UMUC staff on the proposed product and/or services. As well, the Committee may request additional assistance from any source at any time during the procurement

### **3.2. Qualifying Proposals**

The Procurement Officer shall first review each proposal for compliance with the mandatory requirements of this RFP. Failure to comply with any mandatory requirement will normally disqualify a contractor’s proposal. The University reserves the right to waive a mandatory requirement when it is in its best interest to do so. The contractor must assume responsibility for addressing all necessary technical and operational issues in meeting the objectives of the RFP. Proposals cannot be modified, supplemented, cured, or changed in any way after the due date and time for technical proposals, unless specifically requested by the University.

The intent of this RFP is to provide Online Employee Rewards Program providers an opportunity to present their qualifications, experience, and conceptual approach to providing the scope of services in relation to the needs of UMUC. The manner in which the proposing team presents their qualifications will be regarded as an indication of how well the Proposer's philosophy, approach, organizational culture, working style and communications style fit with the University's. Submittals that concisely present the information requested in the order and the manner requested will be considered more favorably than a submittal from a Proposer of commensurate qualifications that displays a lack of organization, conciseness or attention to detail.

### **3.3 Initial Technical Evaluation**

After compliance with the mandatory requirements in this RFP has been determined, the Committee shall conduct its evaluation of the technical merit of the proposals in accordance with the Evaluation Criteria. Proposals are evaluated to determine which proposal is most advantageous to the University. The process involves applying the evaluation criteria contained in the RFP, comparing the proposals to each other, and determining those proposals that are of further interest. The Committee may shortlist based on the evaluation process. The decision for continuation in the procurement process (or further shortlists) will be made by the strengths, weaknesses, advantages, and deficiencies of the technical proposal.

The criteria that will be used by the committee for the technical evaluation of the proposals for this specific procurement are listed above in Section III, Article 1, Paragraphs 2.2 through 2.5. Each committee member will evaluate the proposals on each major criterion. The order of importance of the technical criteria is as follows:

- 1) Online Employee Rewards Program
- 2) Approach to Providing the Services
- 3) Account Management/Staffing of Contract
- 4) Firm Profile/Firm Experience

Proposals evaluated by UMUC to be viable and of further interest (ie "shortlisted") will progress to the next phase of the procurement (See RFP Section III, Article 2, Demonstration/Discussion Sessions.)

All Proposers who submit a Technical Proposal to UMUC will be notified as to whether or not they are shortlisted. **Only** shortlisted firms will advance in the procurement process.

Minor irregularities in proposals, which are immaterial or inconsequential in nature, may be waived wherever it is determined to be in the University's best interest.

END OF SECTION III, ARTICLE 1

**SECTION III  
PROCUREMENT PHASES AND EVALUATION PROCESS**

**ARTICLE 2**

**DEMONSTRATIONS/DISCUSSION SESSIONS/SECOND PHASE TECHNICAL EVALUATION**

**1. Demonstration/Discussion Sessions**

Based on the selection committee's initial review of proposals, the University intends to invite, without cost to itself, **only** the short listed firms to demonstrate their program as well as make a presentation of their proposal. This will allow the shortlisted Proposers to demonstrate their capabilities and expertise in the specific products and services offered by the Proposer as a further consideration in the selection process. **Only** those Proposers who are shortlisted following the initial technical evaluation shall be offered the opportunity to participate in the process.

The date and time of the Demonstration/Discussion Sessions will be set by the University upon completion of the initial technical evaluation, however, these sessions are anticipated to be held per the Solicitation Schedule. Due to the UMUC global community's participation in these sessions, the sessions will be conducted as webinars/webexes from 7 am to 9 am EDT. (Note: Daylight savings time in the US starts on March 13, 2016.) Proposers are advised to set this time period aside on each day of the week noted in the Solicitation Schedule on the Lead Consultant's and Executive-in-Charge's calendars accordingly to avoid any conflicts. The actual dates will be scheduled with the applicable Proposers at the convenience of UMUC at its sole discretion.

The purposes of the Oral Presentation/Discussion Sessions are as follows:

- (i) to allow the University to see the capabilities of the online employee rewards program being offered;
- (ii) meet the Proposer's key people and to allow these key people to convey their expertise and applicable experience;
- (iii) to discuss/clarify any and all aspects of the Proposal in particular the proposed approach to the provision of services under this contract; and,
- (iv) to provide an opportunity to clarify the scope of services for this contract.

At this time, each Proposer will be required to have present the proposed key personnel (Lead Consultant and Executive-in-Charge) as indicated in the Proposer's technical proposal who will be responsible for the provision of services. The Lead Consultant and/or Executive-in-Charge may attend UMUC in person at Adelphi, Maryland for these sessions, but is not required to do so.

The Demonstration/Discussion Session forum will be informal as the University is **not** interested in solely a marketing presentation; rather, the University is requesting a demonstration of the online rewards program and a discussion session with each of the shortlisted firms that allows ample time for the University and the Proposing Firm to ask questions and discuss issues/concerns related to the scope of the engagement and the firm's capabilities/qualifications.

## **2. Second Phase Technical Evaluation/Final Technical Evaluation**

2.2.1 Following the Demonstration/Discussion Sessions held with the short listed firms, a **Second Phase Technical Evaluation** will be conducted. In the Second Technical Evaluation all categories will be re-evaluated based on the Demonstration/Discussion Session. As well, firm and key personnel references\* will be incorporated.

The order of importance of the technical criteria will remain the same with the references\* for the Key Personnel and the Firm incorporated into the appropriate criteria; that is, the order of importance will remain as follows:

- 1) Online Employee Rewards Program
- 2) Approach to Providing the Services
- 3) Account Management/Staffing of Contract/Key personnel references\*
- 4) Firm Profile/Firm Experience/Firm references\*

\*Note: It is UMUC's intent to incorporate references of the Key Personnel and the Firm during the Second Technical Evaluation, however, UMUC reserves the right to further shortlist prior to incorporating such references if deemed in its best interest. It is UMUC's intent to incorporate references of the Key Personnel and/or the Firm prior to the receipt of the Price Proposals.

2.2.2 Further shortlists may result as the procurement progresses. At each phase of the process, those firms that do not remain shortlisted will not progress in the procurement. As the procurement progresses and as results of the technical evaluation are determined by UMUC, all proposers will be notified as to the results of the technical evaluation of his/her firm's technical proposal.

2.2.3 Once a final shortlist of proposals is established, the University will rank the technical proposals from highest to lowest.

**END OF SECTION III, ARTICLE 2**

**SECTION III  
PROCUREMENT PHASES AND EVALUATION PROCESS  
ARTICLE 3  
PRICE PROPOSALS/PRICE EVALUATION**

**1. Price Proposals:**

Only the final shortlisted firms following the technical evaluation will be requested to submit a Price Proposal. Refer to the Solicitation Schedule for the anticipated due date and time for **Price Proposals**. The Price Proposal form anticipated to be used by the Proposer is included in **Appendix B**, however, as the procurement progresses, this form is subject to revision.

As provided on the Price Proposal form, Proposers are to quote a **fixed price** for the initial two-year license/subscription to the online employee rewards program and the associated services. Additionally, a not to exceed escalation percentage is to be provided for the online employee rewards program license/subscription for the Renewal Term(s), if any are taken by UMUC. All costs are to be included in the fixed price as there are no reimbursables associated with the resulting contract.

An itemized breakdown of the program license/subscription as well as the pricing and level of effort for the associated services showing the staffing by position and name, tasks to be done, anticipated hours by task, hourly rates, and cumulative total both by task and overall is also to be provided.

As well, fully loaded hourly rates for each of the assigned staff or staff positions are to be quoted. These fully loaded hourly rates are to be valid through the initial term of the contract. The University will use the fully loaded hourly rates to negotiate any change orders (if any are necessary) to the original scope of work, or for any additional work related to the online employee rewards services.

There are no reimbursables associated with the initial survey effort. The firm fixed price for the initial effort must include all expenses associated with the consulting team's travel to and from Adelphi, and/or Largo, MD (Baltimore/Washington area).

**2. Price Proposal Evaluation:**

Price Proposals will be evaluated based on the full cost of the services. The University may elect to request Best & Final Price Proposal(s). The University will establish a financial ranking of the proposals from lowest to highest total offers.

END OF SECTION III, ARTICLE 3

**SECTION III  
PROCUREMENT PHASES AND EVALUATION PROCESS**

**ARTICLE 4  
FINAL EVALUATION/RANKING AND SELECTION**

1. **Discussions.**

The University reserves the right to recommend an Offeror for contract award based upon the Offeror's technical proposal and price proposal without further discussion. However, should the Committee find that further discussion would benefit the University and the State, the Committee shall recommend such discussions to the Procurement Officer. Should the Procurement Officer determine that further discussion would be in the best interest of the University and the State, the Procurement Officer shall establish procedures and schedules for conducting discussions and will notify responsible Offerors.

2. **Best and Final Offers.**

When in the best interest of the University and the State, the Committee may recommend and the Procurement Officer may permit qualified Offerors to revise their proposals by submitting "Best and Final" offers.

3. **Final Ranking and Selection**

Following evaluation of the technical proposals and the price proposals, the Evaluation and Selection Committee will make an initial overall ranking of the proposals and recommend to the Procurement Officer the award of the contract to the responsible Offeror whose proposal is determined to be the most advantageous to the University and the State of Maryland based on the results of the final technical and financial evaluation in accordance with the University System of Maryland Procurement Policies and Procedures. Technical merit will have a greater weight than financial in the final ranking.

Award may be made to the proposal with a higher technical ranking even if its cost proposal is not the lowest. The decision of the award of the contract will be made at the discretion of the Procurement Officer and will depend on the facts and circumstances of the procurement. The Procurement Officer retains the discretion to examine all factors to determine the award of the contract. The goal is to contract with the Contractor that provides the best overall value to the University.

The University may select one or more Contractors to further engage in negotiations, including terms of a contract and other issues to be incorporated into the contract. The University reserves the right to make an award with or without negotiations.

END OF SECTION III, ARTICLE 4

END OF SECTION III

APPENDICES  
FORMS AND ATTACHMENTS



**APPENDIX A**  
**TECHNICAL PROPOSAL FORMS**

**Acknowledgement of Receipt of Addenda Form**

**Bid Proposal/Affidavit**

**BID/PROPOSAL AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT: I am the (title) \_\_\_\_\_ and the duly authorized representative of (business) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. NOT USED**

**B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES (applicable if an MBE goal is set)**

The undersigned bidder or offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

**B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES (if applicable to the solicitation)**

The undersigned bidder or offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, §14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a bid preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of §B-2(1)–(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded *nolo contendere* to a charge of bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

\_\_\_\_\_  
\_\_\_\_\_

**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of a criminal offense incident to obtaining or attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts arising out of the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), (4) or (5), above;
- (7) Been found civilly liable under a state or federal antitrust statutes for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

- (1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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**G. SUB-CONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction-related services, leases of real property, or construction.

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

**I. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT: I am aware of, and the above business will comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT: I am aware of and that the above business will comply with, Election Law Article, §§14-101 – 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**K. DRUG AND ALCOHOL-FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meaning when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs and alcohol;

(d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace,

(ii) The business' policy of maintaining a drug and alcohol-free workplace,

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b) above, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement, and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than five (5) days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination, or
  - (ii) Require an employee to satisfactorily participate in a *bona fide* drug or alcohol abuse assistance or rehabilitation program; and,
- (k) Make a good faith effort to maintain a drug and alcohol-free workplace through implementation of §K(2)(a)-(j), above.

(3) If the business is an individual, the individual shall certify and agree, as set forth in K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

- (a) The award of contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic\_\_\_)(foreign\_\_\_) [check one] corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

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

Address: \_\_\_\_\_

(If not applicable, so state.)

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

**M. CONTINGENT FEES**

I FURTHER AFFIRM THAT: The business has not employed or retained any person, partnership, corporation, or other entity, other than a *bona fide* employee or agent working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a *bona fide* employee or agent, any fee or any other consideration contingent on the making of the Contract.

**N. CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

(1) "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(2) "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

(3) The bidder or offeror warrants that, except as disclosed in §(4), below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

(4) The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain detail—attach additional sheets if necessary):

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(5) The bidder or offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

**O. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

(1) The undersigned bidder or offeror certifies that, in accordance with State Finance & Procurement Article, §17-705:

(i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement; and

(ii) it is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702.

(2) The undersigned bidder or offeror is unable to make the above certification regarding its investment activities in Iran due to the following activities:

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**P. ACKNOWLEDGMENT**

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and, (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any right or remedy conferred by the Constitution and the laws of Maryland in respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business in respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

Company Name: \_\_\_\_\_

FEIN No: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM**

**RFP NO.:** 91374

**TECHNICAL PROPOSAL DUE DATE:** February 24, 2016 on or before  
11:59 pm EDT.

**RFP FOR:** ONLINE EMPLOYEE REWARDS PROGRAM

**NAME OF PROPOSER:** \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

The undersigned, hereby acknowledges the receipt of the following addenda:

Addendum No. \_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_ dated \_

Addendum No. \_\_\_\_ dated \_

Addendum No. \_\_\_\_ dated \_

As stated in the RFP documents, this form is included in our Technical Proposal.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

END OF FORM

**APPENDIX B  
PRICE PROPOSAL FORM**



PROPOSAL NO.: RFP 91374  
PRICE PROPOSAL DUE DATE: April 7, 2016 AT 11:59 P.M.  
PROPOSAL FOR: UMUC Online Employee Rewards Program  
PROPOSER: \_\_\_\_\_  
Federal Identification Number: \_\_\_\_\_

**PRICE PROPOSAL**

DATE \_\_\_\_\_

Valerie Rolandelli  
University of Maryland University College  
Strategic Contracting Office  
3501 University Blvd. East, Room ADMIN-2344  
Adelphi, MD 20783-8002

Dear Ms. Rolandelli:

The undersigned hereby submits the Price Proposal as set forth in RFP # 91374 dated February 2, 2016 and the following subsequent addenda:

Addendum \_\_\_ dated \_\_\_\_\_  
Addendum \_\_\_ dated \_\_\_\_\_  
Addendum \_\_\_ dated \_\_\_\_\_  
Addendum \_\_\_ dated \_\_\_\_\_

**We confirm that this Price Proposal is based on the Requirements per the RFP and any subsequent addenda as noted above.**

Having received clarification on all matters upon which any doubt arose, the undersigned proposes to complete the work for the work as described in this RFP and subsequent Addenda as noted above. By signing and submitting this response, undersigned hereby agrees to all the terms and conditions of this RFP including any issued addenda. Proposers are cautioned to verify their final proposals prior to submission, as UMUC cannot be responsible for Proposer's errors or omissions. Any price proposal that has been accepted by UMUC may not be withdrawn by the contractor.

**A. Initial two-year of online employee rewards license/subscription fee: \$ \_\_\_\_\_  
Based on \_\_\_\_\_ employees. (Proposers are to provide information regarding when, if ever, the license fee could increase/decrease in the initial year.)**

**Maximum percent (%) increase for subsequent years of the license/subscription: \_\_\_\_\_%  
(We understand such increases are not guaranteed, but will be negotiated between UMUC and the selected vendor at the time of renewal of the license/subscription.)**

**B. Fixed price for associated online employee rewards program services: \$ \_\_\_\_\_  
(We understand that progress payments may be made upon acceptance by UMUC of established milestones met by Vendor. We confirm that this price includes all expenses and travel for the consulting team to and from Adelphi, MD and/or Largo, MD (Baltimore/Washington area).**

**C. Attached to this Price Proposal Form is our firm's maximum fully loaded hourly billing rates for all personnel and staff positions that will be applicable through the initial two-year term of the contract. We understand there are no reimbursable expenses allowed. These hourly rates will be used to negotiate any change order work, if any such changes become necessary during the course of the engagement. [It is acceptable to provide an hourly rate for Year 1 (May 2, 2016 to June 30, 2017) and Year 2 (July 1, 2017 to June 30, 2018).]**

**D. Attached to this Price Proposal Form is an itemized breakout, including any and all travel costs, of the fixed fee for the initial faculty/staff engagement survey services.**

We understand that by submitting a proposal we are agreeing to all of the terms and conditions included in the RFP documents, and that the Bid/Proposal Affidavit submitted as part of the technical proposal remains in effect.

The evaluation and subsequent final ranking of proposals will be in accordance the RFP documents. We understand that technical weighs greater than financial.

We understand that the University reserves the right to award a contract (or contracts) for all items, or any parts thereof, as set forth in detail under the information furnished in the RFP document. We further confirm that the Lead Consultant and other Key People named within our Technical Proposal will be assigned to the UMUC Contract for the duration of this project. We understand that no changes in these assignments will be allowed without written authorization from the University via contract amendment prior to such changes being made.

Enclosure:    Name, Title, Role on Project, and Hourly Rate of Personnel (“Rate Card”)  
                  Itemized Breakout of Fixed Fee for services associated with the initial engagement effort  
                  Living Wage Affidavit

(Signatures should be placed on following page.)

The offeror represents, and it is a condition precedent to acceptance of this proposal, that the offeror has not been a party to any agreement to submit a fixed or uniform price. Sign where applicable below.

**A. INDIVIDUAL PRINCIPAL**

In Presence of Witness: \_\_\_\_\_

FIRM NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_  
SIGNED \_\_\_\_\_  
PRINTED NAME \_\_\_\_\_  
TITLE: \_\_\_\_\_

**B. CO-PARTNERSHIP PRINCIPAL**

\_\_\_\_\_  
(Name of Co - Partnership)  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
In Presence of Witness:

TELEPHONE NO. \_\_\_\_\_

\_\_\_\_\_ as to BY \_\_\_\_\_  
(Partner)

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

\_\_\_\_\_ as to

BY \_\_\_\_\_  
(Partner)

\_\_\_\_\_ as to BY \_\_\_\_\_  
(Partner)

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

**C. CORPORATION**

\_\_\_\_\_  
(Name of Corporation)  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_

Attest:

TELEPHONE NO. \_\_\_\_\_

\_\_\_\_\_  
[Printed Name of Corporate (or Assistant Corporate) Secretary]

\_\_\_\_\_  
[Corporate (or Assistant Corporate) Secretary Signature for Identification]

BY: \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer and Title

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

\_\_\_\_\_  
Title

**Affidavit of Agreement  
Maryland Living Wage Requirements-Service Contracts**

Contract No. 91374 –Online Employee Rewards Program

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract is Exempt from the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons: (check all that apply)

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract is a Living Wage Contract**

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

**Affidavit of Agreement  
Maryland Living Wage Requirements-Service Contracts**

B. \_\_\_\_\_ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply)

- All employee(s) proposed to work on the State contract will spend less than one-half of the employee's time during every work week on the State contract;
- All employee(s) proposed to work on the State contract will be 17 years of age or younger during the duration of the State contract; or
- All employee(s) proposed to work on the State contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature Date

**APPENDIX C**

**Contract Forms**

**IT Product and Professional Services Agreement**

**Contract Affidavit**

1. NATURE OF THE AGREEMENT

This Agreement (“Agreement” or “Contract” ) shall consist of the following documents (including any materials made part thereof), stated in the order of precedence:

- a.
- b.
- c.
- d.

- 1.1 The Contractor shall perform the Services as described in the Agreement and in accordance with Sections \_\_\_\_\_ and \_\_\_\_\_ below. The Contractor shall perform the Services expeditiously and with professional skill and care.
- 1.2 The quoted [*time and material*] price for the Contractor's professional services is \$\_\_\_\_\_ (the “Not to Exceed Amount”). There are no separately chargeable reimbursable expenses associated with this Agreement. In accordance with 1.2.2 below, this Not to Exceed Amount price may not be exceeded without prior written authorization via a contract amendment.

Payments will be made in accordance with Section 4 of this Agreement.

1.2.1 The rates provided in the Price Proposal, included Exhibit \_\_\_\_ to this Agreement, will be used to negotiate the fees associated with any contract modifications.

1.2.2 Change Order Work/Contract Amendments: Any change to the scope, the Not to Exceed Amount , and/or schedule of Services being performed under this Agreement must be documented in a written amendment to this Agreement (“Amendment”) that is signed by both UMUC and Contractor. Additions and/or reductions in scope that do not result in any change in price or a change in the schedule must still be documented in a written Amendment that is signed by both UMUC and Contractor. Amendments must be issued to the Contractor by the Procurement Officer and signed by both Contractor and the Procurement Officer prior to the work being performed. UMUC is not obligated to pay for any additional work performed by the Contractor without prior written authorization from the Procurement Officer.

- 1.3 UMUC will designate a staff member to act as coordinator (“Project Manager”) between UMUC and the Contractor. Throughout the period of the Services, copies of all correspondence, work products, specifications, estimates and other materials prepared by the Contractor should be directed to the Project Manager and to any other UMUC personnel designated by the Project Manager.
- 1.4 Contractor’s professional services team (i.e. Key Personnel) for the Services shall be the same team identified in the Contractor's submittal responding to UMUC's solicitation. No substitutions or replacement of Key Personnel shall be permitted unless necessitated by a team member’s sudden illness, death, or resignation, or as otherwise approved by the Procurement Officer. In any of these events, the Contractor shall promptly notify the Procurement Officer in writing. To the extent practicable, the request to substitute a Key Personnel team member shall be made at least fifteen (15) business days in advance of the proposed substitution and shall contain the information required below. The Procurement Officer must agree to the substitution or replacement in writing before it shall become effective.

All proposed substitutions or replacement of Key Personnel shall have qualifications at least equal or better to that of the person initially proposed by the Contractor and evaluated and accepted by UMUC. The burden of illustrating this comparison shall be the Contractor’s. If one or more of the Key Personnel are unavailable for work under this Contract for a continuous period exceeding fifteen (15) business days, the Contractor shall immediately notify Procurement Officer and propose to replace personnel with personnel of equal or better qualifications within fifteen (15) business days of notification. All requests for

substitutions or replacement shall include a detailed explanation of the circumstances necessitating the proposed substitutions, a resume(s) of proposed substitute(s), and any other information requested by the Procurement Officer to make a determination as to the appropriateness of the proposed substitution (“the Selection Process”). As part of the Selection Process, UMUC, at its sole discretion, may interview the proposed substitute(s) as well as check references of other clients where the substitute(s) was (were) assigned.

UMUC may, at its sole discretion request a change of Contractor’s personnel or a change of any subcontractor’s personnel (Key or otherwise) if deemed to be in the best interest of UMUC. If such a request is made, Contractor is to a) remove the person from UMUC within the time frame specified by UMUC; b) replace the person with a suitable replacement on a temporary basis within ten (10) business days as long as the original resource, if requested by UMUC, is available to remain on the project until a suitable replacement is assigned; and, c) work diligently in accordance with the Selection Process to find a suitable permanent replacement with similar experience and skills in a timely manner, but no later than thirty (30) days from the removal date of the original staff person. The removal and replacement of Contractor’s personnel under this provision is subject to the written approval of UMUC and the execution of a Contract Amendment.

The Contractor’s on-site representatives shall manage the Work of its own staff and coordinate the Work with the activities and responsibilities of UMUC to complete the Work in accordance with the Agreement. The Contractor shall establish on-site organization and lines of authority in order to carry out the overall plans of the engagement. The Contractor’s onsite manager will take his/her direction from UMUC’s Project Manager.

The work week for the Contractor’s staff is not to exceed forty (40) hours without prior written approval by the Project Managers of both parties.

Major changes in the Contractor's organization or personnel (other than the Contractor’s Professional Services Team) that would prevent Contractor from performing the Work as required by this Agreement, shall be reported to UMUC in writing as they occur.

1.5 Contractor Team Organization and Staffing - The Contractor’s Project Manager and UMUC’s Program Manager or designee shall review the personnel support model on a regular basis to review the staffing, workload, and delivery of the Services. Upon mutual agreement between UMUC and the Contractor, staffing resources levels will be evaluated and adjusted to suit UMUC’s project needs. If the Contractor’s Project Manager and UMUC’s Program Manager or designee are unable to resolve any resulting conflicts, the issue(s) will be elevated and resolved by the parties’ Executive Managers and/or the Procurement Officer as may be appropriate.

1.6 Project Plan

A high level, draft project plan was provided by the Contractor to UMUC within its Proposal [*as well as at the discussion sessions held on \_\_\_\_\_*]. However, this project plan was provided for information and evaluation purposes only and both are subject to change in accordance with this Section 1.6. Contractor affirms that the required XX methodology was included in the draft Work Plan and has been accounted for within the Contractor’s Proposal and will be accounted for in the final approved project plan described in this section.

During the planning phase, the Contractor and UMUC will collaboratively develop a comprehensive Project Plan and detailed Statement of Work (SOW). UMUC and Contractor shall mutually agree upon the project management tools to be utilized. UMUC will have the final approval authority of the Project Plan and the SOW.

Using Exhibit 1 “Project Scope and Ownership Grid” as a guide to the roles and responsibilities of both parties, the components of the Project Plan and/or SOW will include, but are not limited to:

- Main work streams/projects (requirements and/or process definition, etc.) inclusive of the required

methodology

- Team leads/owners of each work stream
- Tasks, owners, resources, and descriptions under each work stream, inclusive of designated Contractor and UMUC resources and roles
- Any relevant assumptions
- Major dependencies, issues, and open questions
- Timelines with milestones and deliverables for each work stream and task item inclusive of prioritization of review and/or approvals required by UMUC and/or XX
- Create a medium to house and track the project plan for all key stakeholders to use.
- Comprehensive communication plan for both the implementation and post implementation support phases of the engagement
- Comprehensive change management plan
- Comprehensive testing plan for the implementation and post implementation support phases of the engagement
- Comprehensive training plan, including knowledge transfer, for both the implementation and post implementation support phases of the engagement
- Comprehensive cut over plan
- A detailed data migration plan defining the level of data to be converted to enable relevant legacy data to be available in accordance with documented requirements as specified in either the Project Plan or the Statement of Work, and,
- A comprehensive phase-in and phase-out for the transition from the current existing providers

Once the Project Plan and SOW is established and mutually agreed via a written Contract amendment that is executed by both parties, the parties shall work diligently to meet the timelines set forth in the project plan. Once memorialized in the written amendment, both parties acknowledge that the scope of work, standard processes, and related work plans are in continuous development and therefore may be revised as necessary and appropriate over the course of the project. Refer to Section 1.2.2 for those revisions that require contract amendments.

#### 1.6.1 Evaluation and Acceptance Procedures

a) Unless specifically stated otherwise in the Project Plan or SOW that is developed in accordance with Section 1.6 above, upon completion and delivery of each Deliverable, UMUC will begin the evaluation and acceptance process, which shall include, but not be limited to, the steps described below. Contractor will notify UMUC in writing that the Deliverable has been completed.

b) Within ten (10) business days, unless another time period is mutually agreed, of receipt by UMUC of a scheduled Deliverable, UMUC shall determine whether such Deliverable Materially Conforms to the specifications defined in the Contract. As used herein, the term "Materially Conforms" means that the Deliverable is ready to be used in production or materially meets or exceeds its mutually agreed functionality and performance. If the Deliverable Materially Conforms to the specifications defined in the Contract, then UMUC will provide written confirmation to Contractor that the Deliverable is accepted.

c) If the Deliverable does not Materially Conform, UMUC shall immediately return the Deliverable, along with a written list of all deficiencies preventing acceptance. Contractor shall thereafter make all appropriate and necessary fixes to the Deliverable such that it Materially Conforms and return it to UMUC within the time period specified, which shall be at least ten (10) business days, for re-testing by UMUC, which re-testing shall be limited to the previously identified deficiencies, unless UMUC decides that it is in its best interest to re-test more than the identified deficiencies. If the Deliverable again fails to Materially Conform, then UMUC may, at its sole discretion, (a) further extend the timeframe for cure; (b) extend the warranty period, if applicable, or (c) begin the termination process as defined in Section 12.1 of this Contract. If UMUC does not elect to terminate this Contract after the second failure, it has not



automatically waived its right to do so following any additional failed attempts at correction by Contractor to which the parties may agree.

- d) Notwithstanding the foregoing provisions of this Section, approval of a Deliverable shall be deemed given by UMUC if UMUC has not delivered to Contractor a notice of deficiencies for such Deliverable prior to the expiration of any period for UMUC review thereof as set forth in this Section, or if UMUC uses the Deliverable in production.
- e) In the event an approved Deliverable differs from the specifications for such Deliverable, the specifications shall be deemed modified to conform with such approved Deliverable.
- f) If either party fails to meet the evaluation period described above, or any other periods of time as mutually agreed to, the other party may declare the Contract in material breach and begin the termination process as defined in Section 12.1 of this Contract.

### 1.7 Implementation

Implementation (“Go-Live”) is anticipated to be completed no later thanXXXXX, 2016, unless another date is mutually agreed in writing by both parties. Both parties agree to work diligently and consistently to implement the Services in a commercially reasonable and timely manner. Implementation may be phased, but may occur concurrently rather than sequentially.

1.8 Operations Meetings - Operations Meetings will be held on a regular basis. The agenda for such meetings will be mutually developed. A kick-off meeting to the Contract and the provision of the Services between appropriate representatives of both parties is to be held within fourteen (14) days from the Effective Date of this Agreement, unless another date is mutually agreed. The purpose of the kick-off meeting is to introduce the key personnel of both sides to each other and begin the planning process described in 1.6 above for the Services.

The Contractor’s Program/Project Manager or designee will co-lead the meetings. Meeting notes will be provided to Contractor’s Executive Manager and UMUC’s Program Manager for review and feedback prior to distribution to all attendees and other designees indicated by UMUC’s Program Manager. Other representatives of UMUC and the Contractor may attend meetings and shall receive all notices and minutes of meetings.

These meetings may be attended by Contractor’s Executive Manager in person or by phone so that Contractor’s management is up-to-date on service activities. Contractor is expected to have appropriate personnel in attendance at select meetings based on the agenda items.

1.9 Executive Meetings - UMUC has established an Executive Steering Committee that will drive decisions. UMUC, at its sole discretion, may include the Contractor’s Executive Manager as needed.

## 2. DEFINITIONS

In addition to the definitions ascribed elsewhere in this Agreement, the terms below will have the following meanings when and if used in this Agreement:

2.1 “Materials” means any and all software, Source Code, technology, plans, research, products, processes, services, and/or business operations including, without limitation, product specifications, data, know-how, formulae, equations, algorithms, software, samples, measurements, compositions, sequences, processes, designs, sketches, photographs, graphs, drawings, samples, working models, prototypes, inventions and ideas, information and documentation, and other information provided for and/or used in the completion of this Agreement.

2.2 “UMUC-Owned Materials” means those Materials owned or licensed by UMUC and supplied to Contractor by or for UMUC in connection with the Services that may be required for the Work and the Deliverables. UMUC Materials specifically includes Materials which would be confidential or proprietary in respect to a private entity.

2.3 “Contractor-Owned Materials” means those Materials owned or licensed by Contractor or its subcontractors which may be supplied by Contractor and /or licensed to UMUC in connection with the Services, Work and Deliverables.

2.4 “Student-Owned Materials” means any and all Materials supplied to Contractor by UMUC students (including, but not limited to, biometrics and identifying information) accessing any and all services and products produced by Contractor for UMUC under and as contemplated in this Agreement (“Students”).

2.5 “Student Data” means any and all student data supplied to Contractor by UMUC (including, but not limited to, personally identifiable information and unique student identifiers) accessing any and all services and products produced by Contractor for UMUC under and as contemplated in this Agreement.

2.6 “Intellectual Property Rights” shall mean (a) copyrights and copyright applications, including any renewals, in either the United States or any other country; (b) trademarks, service marks, trade names, and applications or registrations for any of the foregoing in the State of Maryland, United States or any other country; (c) trade secrets or any data or information which provides value or a competitive advantage to its holder by not being publicly known; (d) patents, patent applications, continuations, divisionals, reexaminations, reissues, continuations-in-part, and foreign equivalents of the foregoing, in the United States or any other country and (e) any other right, title or interest in and to intellectual property as may be applicable to this Agreement.

2.7 “Inventions” means inventions, discoveries, concepts, and ideas, whether patentable or not, including but not limited to processes, methods, formulae, software, techniques, blueprints, schematics, drawings, data, formulae, know-how, compositions, designs, sketches, photographs, graphs, samples, working models or prototypes, original works of authorship, as well as improvements thereof or know-how related thereto.

2.8 “Services or Work” means the products and services to be performed and provided by Contractor in accordance with this Agreement.

2.9 “Source Code” means the human-readable description of the structure and methods of operation of any software, including but not limited to, flowcharts, programmers’ notes, and such other materials as may be reasonably necessary for a competent programmer to modify and maintain such software.

2.10 Day or day – Calendar day unless otherwise specified.

2.11 Deliverable – is a tangible, verifiable work output such as a specification, programming, code, modification or other output developed by Contractor for delivery to UMUC under this Agreement. A Deliverable shall not include customization or enhancement of the Contractor-Owned Materials requested by UMUC that are not intended to be owned by UMUC.

2.12 Purchase Order: Purchase Order (“PO”) (and Change Orders to Purchase Orders) as used throughout this Agreement includes Purchase Orders and/or Change Orders to Purchase Orders issued by UMUC for accounting purposes only. Such Purchase Orders are not anticipated to include preprinted Terms and Conditions . However, if any PO Terms and Conditions are inadvertently issued with a Purchase Order (or Change Order to a Purchase Order), such PO Terms and Conditions will not supersede the terms and conditions in this Agreement, unless the PO Terms and Conditions are specifically accepted by the parties.

### 3. TERM OF AGREEMENT

3.1 The term of this Agreement (the “Initial Term”) shall commence on the date of execution of this Agreement by UMUC continue through post implementation unless otherwise extended or terminated as provided in this Agreement or as a matter of law.

In addition to its termination rights in Sections 12.1 and 12.2, UMUC at its sole option may discontinue the services, in whole or in part, of any or all of the vendor(s) at any time during the Term with 30 days written notice with no further obligations to the Contractor except with respect to fees owed for services performed through the date of termination and with no penalty. If UMUC elects to discontinue any or all contract(s), a summation of work in progress for the Agreement will be made and a mutual agreement as to how to finalize this work in progress and/or transition to a new provider of XX services will be made.

3.2 Upon completion of the Initial Term, UMUC may, at its sole option, elect to renew the Agreement in writing for a period, or periods, not to exceed additional years ("Renewal Term(s)).

#### 4. PAYMENT TERMS

4.1 Payment will be made in accordance with the terms and conditions set forth in this Agreement. Contractor's fees for professional services shall not exceed the rates set forth in the Contractor's Price Proposal dated \_\_\_\_\_, 201\_, as attached herein as Exhibit \_\_\_\_\_ .

4.1.1 UMUC will pay only for hours worked for each assigned Contractor's personnel at the quoted fully loaded hourly rates for onsite work or the hourly rate for remote work, whichever is applicable. UMUC will not reimburse for travel expenses or any other applicable business expenses.

#### 4.1.2 [ADD IF APLICABLE –List of Milestones/Deliverables – add if applicable ]

*[PLACEHOLDER – for list of mutually agreed Milestones and associated Deliverables.]*

#### 4.2 Invoicing

4.2.1. Payment requests (invoices) shall be submitted electronically to the Accounts Payable Department, University of Maryland University College, 3501 University Boulevard East, Adelphi, MD 20783-8002 at [accountspayable@umuc.edu](mailto:accountspayable@umuc.edu). The invoice must be in US Dollars to UMUC and must contain the following information: state "Invoice" on the bill; reference the date indicated; type of billing (i.e., the deliverable); the Federal Employer's ID Number or Social Security Number; the University's Purchase Order Number, and additional information as may be specifically required elsewhere in this Agreement.

4.2.2. Payments to Contractor pursuant to this Agreement shall be made no later than 30 days after UMUC's receipt of a proper invoice from Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

4.2.3 Detailed, itemized invoices shall be presented at the beginning of each month covering service during the previous month. Details regarding the hours worked by each person, by project phase, must be provided with the invoice. [Additionally, a 5% retainage fee will be clearly designated within invoices.]

4.2.4 UMUC shall not be obligated to pay invoiced amounts that it disputes in good faith, provided that UMUC notifies Contractor in writing of such dispute within ten (10) days of UMUC's receipt of the applicable invoice. Amounts not in dispute and disputed amounts once resolved will be paid in accordance with Section 4.2.2.

4.2.5 UMUC's approval of periodic payments to the Contractor shall not constitute, in any sense, approval or acceptance by UMUC of the Project work performed through the date of the invoice or of the Contractor's assertion of percentage of the Project work or the hours worked completed through the date of the invoice.

4.2.6 When required by UMUC to substantiate the degree of completion or hours worked claimed in any application for periodic payments, the Contractor shall furnish UMUC with copies of documents necessary to support the degree of completion or hours worked claimed.

4.3. Contractor hereby agrees that, notwithstanding the provisions of State Finance and Procurement Article of the Annotated Code of Maryland, Title 15, Subtitle 1, interest on any payments due under the terms of this Agreement shall not be payable unless such payments remain unpaid for more than forty-five (45) days after receipt of a proper invoice and such payments shall accrue interest from the 31st day after receipt of a proper invoice.

4.4 Taxes - The fees hereunder do not include any sales, use, excise, import or export, value-added or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees levied on the delivery of any software or the performance of services by Contractor to UMUC. If UMUC is exempt from any such taxes or fees, then such taxes or fees shall not be charged to UMUC upon Contractor's receipt of a copy of UMUC's tax exemption certificate or number.

#### 4.5 Electronic Funds

Electronic funds may be used by the State to pay Contractor for this Agreement and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

### 5. OWNERSHIP AND PROPRIETARY RIGHTS

5.1 Contractor owns and retains all right, title and interest in Contractor-Owned Materials. UMUC owns and retains all right, title and interest in UMUC's Owned Materials. UMUC Students own and retain all right, title and interest in UMUC Student-Owned Material. UMUC acknowledges and agrees that, unless otherwise agreed by Contractor in writing, Contractor is the sole and exclusive owner of all rights, including but not limited to all patent rights, copyrights, trade secrets, trademarks, and other proprietary rights in the systems, programs, specifications, user documentation, and other Contractor-Owned Materials used by Contractor in the course of its provision of services hereunder. UMUC also acknowledges and agrees that in entering into this Agreement, UMUC acquires no ownership rights in Contractor-Owned Materials. UMUC shall not copy, transfer, sell, distribute, assign, display, or otherwise make Contractor-Owned Materials available to third parties. Contractor acquires no rights of ownership in or to the UMUC owned Materials or the Student-Owned Materials; or anything that is provided to Contractor by UMUC, including but not limited to business processes, software and related documentation. Any modifications or enhancements to the UMUC Owned Materials or the Student-Owned Materials including those suggested or implemented by Contractor, shall belong to UMUC. Contractor agrees that its rights to use any such materials or data provided by UMUC, including all UMUC-owned Materials is limited to such use as is necessary to permit Contractor to perform Services and obligations in this Agreement.

5.2 UMUC has the responsibility for providing Contractor with the copyright notice language to appear on websites, delivered course content and/or assessments, and on any related practice and/or demonstration materials. Contractor will have the responsibility for providing that the copyright notice language provided to Contractor by UMUC will appear as provided on any applicable materials. Any copyright notice language or other language acknowledging Contractor's ownership or other legal rights of Contractor which appears on websites, course content and/or assessments, and in any practice and/or demonstrational materials will be limited to such language as is necessary to protect Contractor's legal rights. Unless provided to Contractor by UMUC, no language acknowledging the legal rights of any third party shall appear on materials without the prior written consent of UMUC.

5.3 Notwithstanding anything in the Agreement to the contrary, any and all Deliverables shall be the sole and exclusive property of UMUC. Notwithstanding the foregoing, the intellectual capital (including without limitation, ideas, methodologies, processes, inventions and tools) developed or possessed by Contractor prior to, or acquired during, the performance of the Scope of Work shall be Contractor-Owned Material.

5.4 Upon UMUC's request or upon the expiration or termination of this Agreement, Contractor shall deliver, destroy or return all copies of the Work to UMUC, as UMUC remits payment to Contractor for all services rendered with respect to such Work. Contractor is permitted, subject to its obligations of confidentiality, to retain one copy of the Work for archival purposes and to defend its work product.

5.5 Contractor and UMUC intend this Agreement to be a contract for services and each considers any tangible work products identified as Deliverables ("Deliverables") during the Term or Terms of this Agreement to be a work made for hire. If for any reasons the Deliverables would not be considered a work made for hire under applicable law, Contractor does hereby sell, assign and transfer to UMUC, its successors, and assigns, the entire right, title and interest in and to the copyright and any registrations and copyright applications relating thereto and renewals and extensions thereof, and in and to all works based upon, derived from or incorporating the Deliverables, and in and to all income, royalties damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world. Contractor agrees to execute all documents and to perform such other proper acts as UMUC may deem necessary to secure for UMUC the rights in the Deliverables.

5.6 Other than Deliverables and Contractor-Owned Materials, the tangible property and work products created by Contractor pursuant to this Agreement ("Work Product") shall mutually belong to UMUC and Contractor and each shall be free to use such Work Product without permission of or payment of royalty to the other. As to tangible products and work products identified as Deliverables during the Term or Terms of this Agreement, all Deliverables shall be owned exclusively by UMUC.

5.9 UMUC recognizes that Contractor's business depends substantially upon the accumulation of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops in its engagements. UMUC's business also depends substantially upon the accumulation and application of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops through collaboration with contractors and other service providers. Accordingly, to the extent material that is used in, enhanced, or developed in the course of providing Services hereunder is of a general abstract character, or may be generically re-used, and does not contain Confidential Information of UMUC, then Contractor will own such material including, without limitation: methodologies; delivery strategies, approaches and practices; generic software tools, routines, and components; generic content, research and background materials; training materials; application building blocks; templates; analytical models; project tools; development tools; inventions; solutions and descriptions thereof; ideas; and know-how (collectively "Know-how") developed by Contractor and UMUC will own the Know-how developed by UMUC. To the extent such Know-how is contained or reflected in the Work Product, each party hereby grants the other a fully paid up, perpetual license to use such Know-how. Neither party will sublicense or sell Know-How of the other party to any third party, and will not use or exploit the Know-How of the other party to compete with the information technology and professional services of Contractor or the educational services and delivery of the UMUC.

5.10 In the event of loss of any data or records necessary for the performance of this Agreement where such loss is due to the error, negligence, or intentional wrongdoing of the Contractor or any of its subcontractors, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records, subject to Section 11. Limitation of Liability of this Agreement.

## 6. PROPRIETARY AND CONFIDENTIAL INFORMATION

6.1 Contractor acknowledges and understands that in connection with this Agreement, the performance of the Scope of Work and otherwise, Contractor has had or shall have access to, has obtained or shall obtain, or has been or shall be given the UMUC's Confidential Information (as defined herein). For purposes of this Agreement, "Confidential Information" means all information provided by UMUC, or UMUC Students to Contractor, including without limitation information concerning the UMUC's business strategies, political and legislative

affairs, students, employees, vendors, contractors, student records, customer lists, finances, properties, methods of operation, computer and telecommunications systems, software and documentation, student materials, student name and other identifying information which is generated by the student, such as biometrics. Confidential Information includes information in any and all formats and media, including without limitation oral, and includes the originals and any and all copies and derivatives of such information.

6.2 Contractor shall use the Confidential Information only if and when required for the performance of the Services, and for no other purpose whatsoever, and only by Contractor employees engaged in that performance. Contractor may also share Confidential Information with its corporate affiliates and with agents and contractors who are bound by similar obligations of confidentiality and who need such information as part of Contractor's performance under this Agreement.

6.3 Contractor shall not, in any manner whatsoever, disclose, permit access to, or allow use of Confidential Information to any person or entity except as specifically permitted or required under this Agreement.

6.4 Contractor acknowledges and understands that UMUC is required to protect certain Confidential Information from disclosure under applicable law, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), the Gramm Leach Bliley Act ("GLBA"), or the Maryland Public Information Act ("PIA"), including regulations promulgated thereunder, as the laws and regulations may be amended from time to time (collectively the "Privacy Laws"). The Confidential Information that is protected under FERPA was provided to the Contractor as it is handling an institution service or function that would ordinarily be performed by UMUC's employees. Contractor agrees that it shall be obligated to protect the Confidential Information in its possession or control in accordance with the Privacy Laws and as a "school official" under FERPA. The Contractor further agrees that it is subject to the requirements governing the use and redisclosure of personally identifiable information from education records as provided in FERPA.

6.5 Contractor may disclose Confidential Information as required by legal process. If Contractor is required by legal process to disclose Confidential Information, Contractor shall immediately notify UMUC, and before disclosing such information shall allow UMUC reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.

6.6 Contractor's obligations with respect to Confidential Information shall survive the expiration or the termination of this Agreement.

6.7 Contractor acknowledges that its failure to comply fully with the restrictions placed upon use, disclosure and access to Confidential Information may cause UMUC grievous irreparable harm and injury. Therefore, any failure to comply with the requirements of this section may be a material breach of this Agreement.

6.8 Contractor agrees and acknowledges that it is not the custodian of any Confidential Information that may be in Contractor's possession or control. Contractor shall forward any request for disclosure of Confidential Information to:

6.9 Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that (1) is or becomes generally known to the public, other than as a result of disclosure by Contractor, (2) had been previously possessed by Contractor without restriction against disclosure at the time of receipt by Contractor, (3) was independently developed by Contractor without violation of this Agreement, or (4) Contractor and UMUC agree in writing to disclose. Each party shall be deemed to have met its nondisclosure obligations under this section as long as it exercises the same level of care to protect the other's information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement.

6.10 Contractor agrees to use Student-Owned Materials, UMUC - Owned Materials and UMUC's Confidential Information only as necessary to perform its responsibilities under this Agreement. Contractor shall keep these

materials and information confidential in accordance with this Agreement and shall use reasonable commercial efforts to prevent and protect the contents of these materials, or any parts of them, from unauthorized disclosure. Further, Contractor will take industry standard measures to protect the security and confidentiality of such information including controlled and audited access to any location where such confidential and proprietary data and materials reside while in the custody of Contractor and employing security measures to prevent system attacks (e.g., hacker and virus attacks).

6.11 Contractor will implement security measures at its offices and all other associated facilities in connection with Contractor software to provide for strict confidentiality of UMUC's Owned Materials and UMUC's Confidential Information. These measures will include, without limitation, encryption, use of a sign-on and access privilege system and other measures described in this Agreement, and such other measures as Contractor deems necessary in its professional discretion. Unless otherwise provided by separate agreement, upon termination of this Agreement or upon earlier request by UMUC, Contractor shall return to UMUC, all UMUC-Owned Materials or UMUC's Confidential Information, all data, software provided to Contractor by UMUC, student records, and any other proprietary information or materials that have not already been purged pursuant to this Agreement; alternatively and at UMUC's option, Contractor shall destroy any or all of the aforementioned beyond recoverability. Contractor may retain one full version of part or all of the aforementioned data for the sole purposes of demonstrating contractual compliance. Any data referred to in this section that is still within Contractor's actual or constructive control shall be subject to the terms of this Agreement in perpetuity. Except as otherwise provided herein, Contractor shall not retain any electronic or other copies of any of the data or information contemplated herein without the prior written authorization from UMUC.

6.12 UMUC will implement security measures at its offices and all other associated facilities to ensure the confidentiality of Contractor's confidential information and materials in manner like that provided by UMUC for its own information and materials identified as confidential under this Agreement. Unless otherwise provided by separate agreement, upon termination of this Agreement, UMUC shall return to Contractor all Contractor-Owned Materials, including software, Source Code, and/or documentation provided to UMUC by Contractor; alternatively and at Contractor's option, UMUC shall destroy any or all of the aforementioned beyond recoverability. UMUC shall not retain any electronic or other copies of any Contractor-Owned Materials or other Contractor Proprietary and Confidential Information absent of prior written authorization from Contractor.

6.13 In addition to the exceptions set forth in 6.9 above, neither party shall be obligated to maintain any information in confidence or refrain from use, if: (a) the information was lawfully in the receiving party's possession or was known to it prior to its disclosure from the disclosing party as shown by written records; (b) the information is, at the time of disclosure, or thereafter becomes, public knowledge without the fault of the receiving party; or (c) disclosure is required by subpoena or pursuant to a demand by any governmental authority.

6.14 Except as specifically permitted by this Agreement, Contractor acknowledges that any unauthorized use, reproduction or disclosure of UMUC's Proprietary and Confidential Information and Property could result in irreparable injury to UMUC and further agrees that there may be no adequate remedy at law for any breach of its obligations hereunder and upon any such breach or any threat thereof by Contractor, UMUC will be entitled to seek appropriate equitable relief, including immediate injunctive relief and monetary damages resulting from material breach of the terms of this Section, as well as any other rights and remedies that may be available to UMUC by law.

6.15 Except as specifically permitted by this Agreement, UMUC, acknowledges that any unauthorized use, reproduction or disclosure of Contractor's Proprietary and Confidential Information and Property, other than any use, reproduction or disclosure made under the Maryland Public Information Act, may result in irreparable injury to Contractor and further agrees that there may be no adequate remedy at law for any breach of its obligations hereunder and upon any such breach or any threat thereof by UMUC, Contractor may be entitled to seek appropriate damages resulting from material breach of the terms of this Section, as well as any other rights and remedies that may be available to Contractor by law. Nothing in this provision is intended as a waiver of any defense that may be available to UMUC.

## 7. REPRESENTATIONS AND WARRANTIES

7.1 Each party warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

### 7.2 Compliance with Laws

Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement;
- C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

### 7.3 Services, Deliverables and Contractor Hardware/Software

Contractor hereby Warrants and Represents:

- A. That it shall perform all of the Work in a professional manner in accordance with industry standards and that the services and deliverables will conform to the specifications in the Agreement.
- B. Contractor is the owner or authorized user of Contractor software and all of its components, and Contractor software and all of its components, to the best of Contractor's knowledge, do not violate any patent, trademark, trade secret, copyright or any other right of ownership of any third party.
- C. Contractor's hardware, software and its components are equipped and/or designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information.
- D. Contractor has used industry standards for vulnerability testing and software quality code reviews to provide that Contractor software is free of any and all "time bombs," computer viruses, copy protect mechanisms or any disclosed or undisclosed features which may disable Contractor software or render it incapable of operation (whether after a certain time, after transfer to another central processing unit, or otherwise).
- E. The physical medium on which this Software is distributed is free from defects in materials and workmanship under normal use, the Software will perform according to the nature of the agreement, and to the best of Contractors knowledge UMUC's use of the software is not an infringement of any third party's intellectual property rights.

This Section 7.3 does not apply to XX or other software which UMUC procures independently of Contractor.

F. If hosted services, the Contractor hereby warrants and represents that Contractor has used industry standards for vulnerability testing and software quality code reviews to ensure that computer software purchases, as delivered, does not contain any program code, virus, worm, trap door, back door, timer, or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in



accordance with its user manuals, either automatically, upon the occurrence of Contractor-selected conditions, or manually on the command of Contractor.

## G. SECURITY

G.1 Contractor shall endorse UMUC's requirement to adhere to the University System of Maryland's (USM) IT Security Standards (<http://www.usmd.edu/usm/adminfinance/itcc/ITSecResource.html>). UMUC is required to assess risks, ensure data integrity, and determine the level of accessibility that must be maintained. Specific activities include:

- Identification of security, privacy, legal, and other organizational requirements for recovery of institutional resources such as data, software, hardware, configurations, and licenses at the termination of the Agreement.
- Assessment of the contractor's security and privacy controls.
- Including UMUC's security and privacy requirements in the agreement
- Periodic reassessment of contractor services provisioned to ensure all Agreement obligations are being met and to manage and mitigate risk.

G.2 The Contractor is the owner or authorized user of the Contractor's software and all of its components, and Contractor software and all of its components, to the best of Contractor's knowledge, do not violate any patent, trademark, trade secret, copyright or any other right of ownership of any third party.

G.3 Contractor shall (i) establish and maintain industry standard technical and organizational measures to help to protect against accidental damage to, or destruction, loss, or alteration of the materials; (ii) establish and maintain industry standard technical and organizational measures to help to protect against unauthorized access to the Services and materials; and (iii) establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Services. Contractor software and its components are equipped and/or designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information.

G.4 Contractor will report any confirmed or suspected breach of UMUC data to UMUC's Computer Incident Response Team: [[CIRT@umuc.edu](mailto:CIRT@umuc.edu)] within one hour of discovery or detection. Contractor will notify UMUC CIRT within 12 hours of any confirmed or suspected computer security or operational incidents not resulting in breach of University data, including but not limited to Contractor-based technical problems, power outage affecting authentication, suspicion concerning identity of person logging on, Contractor or Contractor's subcontractor system intrusions (e.g., attack by hacking, virus infection).

G.5 Follow strong identity management characteristics and practices, requiring users to adhere to organizational usage, construction, and change requirements.

G.6 Configure and maintain network to be suitably hardened against security threats and provide for adequate performance.

## 8. INSURANCE

8.1 Contractor shall secure, and shall require that subcontractors secure, pay the premiums for and keep in force until the expiration of this agreement, and any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by contractor under this agreement inclusive of the requirements below:

- Commercial General Liability Insurance including all extensions-

- Not less than \$1,000,000 each occurrence;
- Not less than \$1,000,000 personal injury;
- Not less than \$1,000,000 products/completed operation
- Not less than \$1,000,000 general aggregate
- Workmen's compensation per statutory requirements
- Professional liability or Technology Errors and Omissions insurance in an amount not less than \$1,000,000.

Limits of insurance may be achieved either singularly or by combination of applicable coverages.

8.2 All policies for liability protection, bodily injury or property damage and fiduciary bonding must specifically name on its face UMUC as an additional insured with respect to operations under this Agreement, including but not limited to Contractor's data center or other premises where UMUC's data is stored, provided, however, with respect to Contractor's liability for bodily injury or property damages above, such insurance shall cover and not exclude Contractor's liability for injury to the property of UMUC and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees, or guests of UMUC.

8.3 Contractor will require that each insurance policy except for professional liability contains endorsements, identical to, or as close to the following: "It is understood and agreed that the Insurance Company shall notify in writing Procurement Officer thirty-days (30) in advance of the effective date of any cancellation of this policy". Contractor shall directly notify in writing Procurement Officer thirty-days (30) in advance of the effective date of any cancellation or reduction of Contractor's professional liability policy. Notices of policy cancellations or reductions shall be furnished to the Procurement Officer. All required insurance coverages must be acquired from insurers allowed to do business in the State of Maryland. The insurers must have a policy holder's rating of "A-or better".

## 9. INDEMNIFICATION

9.1 In addition to the obligations to indemnify set forth elsewhere in the Agreement, Contractor will indemnify and hold harmless UMUC its employees, contractors, and agents, from any and all loss, damage, injury, or liability arising directly out of Contractor's operations under this Agreement, including operation of equipment or vehicles, and wrongful or tortious acts of omission, commission, or negligence by Contractor, its employees, contractors, or agents when engaged in company operations under this Agreement, and including the disclosure of user personally identifiable data, either during the term of this Agreement or at any time thereafter, if such disclosure occurred as a result of negligence by Contractor, its employees, contractors, or agents, and provided that UMUC: (a) notifies Contractor promptly in writing of any such claim or proceeding, (b) reasonably cooperates with Contractor in defending any such claim or proceeding, and (c) in no event shall UMUC settle any such claim without Contractor's prior written approval.

9.2 Contractor will indemnify and hold harmless UMUC its employees, contractors, and agents, from any and all loss, damage, injury, or liability arising directly out of Contractor's operations under this Agreement with respect to patent infringement, or trademark or copyright violation arising out of purchase or use of materials, software, supplies, equipment or services under this Agreement and for a violation or breach of the provisions set forth in Sections 5 and 6 of this Agreement. Contractor will defend and indemnify UMUC, or settle any suit, judgment or claim or proceeding for which the cause of action arising out of this Agreement (collectively, a "Claim") brought against UMUC alleging that Contractor software infringes any U.S. patent, copyright, trademark, or other proprietary right, and shall pay any final judgment against UMUC, including all court awarded costs, damages and expenses, which result from any such claim, provided that UMUC: (a) notifies Contractor promptly in writing of any such claim or proceeding, and (b) reasonably cooperates with Contractor in defending any such claim or proceeding.

9.3 If UMUC's use of Contractor's software or Services becomes, or in Contractor's opinion is likely to become, enjoined as a result of a claim pursuant to this Section, Contractor, at Contractor's expense, shall either

procure UMUC's the right to continue using the software or Services, or replace or modify the same so that it becomes non-infringing (provided replacement or modified software or Services have substantially comparable functionality to the original software or Service) or, in the event performing the foregoing options are not commercially reasonable, refund to UMUC the fees paid for the particular software or Services out of which the claim arose.

9.4 UMUC shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this Agreement.

#### 10. **[SOFTWARE - Only Add if applicable to this Agreement.]**

*[10.1 If Contractor licenses software to UMUC under this Agreement, Parties may if required, execute one or more agreements to create an escrow for the benefit of UMUC (collectively the "Escrow Agreement"). The cost of the Escrow account shall be borne by UMUC.*

*10.2 If an Escrow Agreement is executed, Contractor, as an obligation under this Agreement, shall perform its obligations under the Escrow Agreement.]*

#### 11. **LIMITATION OF LIABILITY**

NEITHER UMUC NOR AGREEMENTOR SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, AND LOSS OF GOODWILL, WHETHER IN AGREEMENT OR IN TORT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS PROVIDED FOR IN SECTIONS "6. PROPRIETARY AND CONFIDENTIAL INFORMATION" AND "SUBSECTIONS 9.1 AND 9.2 OF SECTION 9. INDEMNIFICATION" OF THIS AGREEMENT, CONTRACTOR'S LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY UMUC UNDER THIS AGREEMENT DURING THE TERM OF THIS AGREEMENT OR \$500,000, WHICHEVER IS GREATER.

#### 12. **TERMINATION**

12.1 **Termination for Default** If the Contractor fails to fulfill its obligation under this Agreement, properly and on time, or otherwise violates any provision of the Agreement, UMUC may terminate the Agreement by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished Deliverables provided by the Contractor shall, at UMUC's option, become the UMUC's property. UMUC shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and UMUC can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

12.2 **Termination for Convenience** The performance of work under this Agreement may be terminated by the UMUC, in accordance with this clause in whole, or from time to time in part, whenever the UMUC shall determine that such termination is in the best interest of UMUC. UMUC will pay all reasonable costs associated with this Agreement that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of the USM Procurement Policies and Procedures.

13. Americans with Disabilities Act

Contractor shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) as well as all applicable federal and state laws and regulations, guidelines and interpretations including but not limited to the National Rehabilitation Act Section 508 issued thereto.

14. Non-Discrimination in Employment

Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental disability unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. MISCELLANEOUS TERMS

15.1 Publicity/Use of Name and Logo

A. Contractor is authorized to identify UMUC as a party to this Agreement for the purpose of identifying UMUC as a customer to potential customers. However, any other use of UMUC's name promotionally or otherwise in connection with Contractor's business or the subject matter of this Agreement is prohibited without the prior written consent of UMUC.

B. Intentionally Omitted

C. This Agreement does not include a trademark license. Except as allowed by law for limited informational purposes, UMUC grants no rights to use any of its trademarks or service marks, for any purpose, without the prior and explicit written permission of UMUC. Under no circumstances does UMUC grant the right to use its corporate logos or signature except in connection with the products or services that are the subject matter of this Agreement or any related products or services.

D. Any violation of this Section 15.1 will be considered a material breach of this Agreement and grounds for its immediate termination in UMUC's sole discretion.

15.2 Notices

Notices under this Agreement will be written and will be considered effective upon personal delivery (email delivery is not considered personal delivery and any notice delivered via email must be followed up in physical form) to the person addressed or five (5) calendar days after deposit in any U.S. mailbox, first class (registered or certified) and addressed to the other party as follows:

If to UMUC: 3501 University Boulevard East, Suite ICC-3120  
Adelphi, Maryland 20783 USA

If to Contractor:

15.3 Delays and Extension of Time

Contractor agrees to prosecute the Work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the Work specified in this Agreement. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not

restricted to, acts of God, acts of public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of an Agreement with the State or UMUC, changes in law or regulation, action by government or other competent authority, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, malicious or criminal acts of third parties, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either Contractor or the subcontractors or suppliers. If Contractor is unable to perform its obligations under this Agreement for ten (10) days, unless another time duration is mutually agreed, due to a Force Majeure, then UMUC may terminate this Agreement. Termination will occur according to Section 14 of this Agreement.

#### 15.4 Suspension of Work:

The Procurement Officer of UMUC unilaterally may order Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the UMUC. Such suspension, delay or interruption may be subject to applicable fees and expenses incurred by the Contractor. Such fees and expenses, if any, will be subject to negotiation between the UMUC and the Contractor. If the work is suspended by UMUC, Contractor may be permitted to replace its Key Personnel, permission for which will not be unreasonably withheld, in accordance with Section 1.4 of this Agreement.

#### 15.5 No Waiver

The failure of either party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such party thereafter to enforce such provisions or any other provisions.

#### 15.6 Dispute Resolution

A. Contractor and UMUC, agree to work in good faith to resolve between them all disputes and claims arising out of or relating to this Agreement, the parties' performance under it, or the breach of a party's obligations under this Agreement. Contractor and UMUC will each designate an officer or other management employee with binding authority to meet in good faith and attempt to resolve the dispute. During their discussions, each party will honor the other's reasonable requests for information relating to the dispute or claim. Failure to do so shall not be a breach of this Agreement but shall indicate that the parties are unable to resolve their dispute.

B. If the Parties are unable to resolve the dispute within thirty (30) days after referral to them, the Disputes process outlined below will be followed:

(1) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this Agreement that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

(2) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

(3) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.

(4) When a claim cannot be resolved by mutual agreement, Contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.

(5) Contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.

(6) The procurement officer shall render a written decision on all claims within 180 days of receipt of Contractor's written claim; unless the procurement officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the procurement officer shall notify Contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the University.

(7) The procurement officer's decision shall be final and conclusive unless Contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.

(8) Pending resolution of a claim, Contractor shall proceed diligently with the performance of the Agreement in accordance with the procurement officer's decision.

#### 15.7 Retention of Records

Contractor shall retain and maintain all records and documents relating to this Agreement for three years after completion of the Agreement and final payment by UMUC and will make them available for inspection and audit by authorized representatives of the UMUC or State of Maryland, including the Procurement Officer or designee, at all reasonable times. Compliance with this provision by Contractor shall not be deemed a breach of any confidentiality obligations provided for herein.

#### 15.8 Non-Hiring of Officials and Employees

During the term of this Agreement and for a period of one (1) year after its termination, neither party shall directly or indirectly (a) solicit for hire or engagement any of the other party's personnel who were in the provision or receipt of the Services under this Agreement or (b) without the prior written consent of the other party, hire or engage any person who is or was involved in the direct provision or receipt of Services under this Agreement until thirty (30) days following the termination of the employee or entity's employment or engagement with the other party. For the purposes described herein, the prohibitions in this paragraph do not include broad-based recruiting efforts, including without limitation help wanted advertising and posting of open positions on a party's internet site.

No official or employee of the State of Maryland as defined under State Government Article, 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement, shall, during the pendency or term of this Agreement and while servicing as an official or employee of the State, accept employment from or be an employee of the contractor or any entity that is a subcontractor to Contractor under this Contract.

#### 15.9 Contingent Fee Prohibition

Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

#### 15.10 Financial Disclosure

Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other

agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### 15.11 Political Contribution Disclosure

Contractor shall comply with Election Law Article Sections 14-101 through 14-108 of the Annotated Code of Maryland, which requires that every person making contracts with one or more governmental entities during any 12 month period of time involving cumulative consideration in the aggregate of \$100,000 or more to file with the State Board of Elections a statement disclosing certain campaign or election contributions.

#### 15.12 Anti-Bribery

Contractor warrants that neither it nor any of its officers, directors or partners, nor any employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the federal government.

#### 15.13 Ethics

This Agreement is cancelable in the event of a violation of the Maryland Public Ethics Law by Contractor or any UMUC's employee in connection with this Agreement.

#### 15.14 Multi-Year Contracts Contingent Upon Appropriations

A. If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the UMUC's rights or Contractor's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both Contractor and UMUC from future performance of the Agreement, but not from their rights and obligations existing at the time of termination.

B. In the event of any such termination, UMUC shall pay Contractor for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. UMUC shall notify Contractor as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

#### 15.15 Pre-Existing Policies

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in USM Procurement Policies and Procedures in effect on the date of execution of this Agreement are applicable to this Agreement.

In the event of a conflict between this Agreement and the USM Procurement Policies and Procedures, the Agreement prevails.

#### 15.16 Survival After Expiration or Termination

Notwithstanding the expiration or termination of this Agreement or any renewal period hereof, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or termination will survive including, without limiting the foregoing, the following sections:

- A. Ownership and Proprietary Rights, Section 5 (and Exhibit , if applicable)
- B. Proprietary and Confidential Information, Section 6 (and Exhibit , if applicable)

- C. Representations and Warranties, Section 7
- D. Indemnification, Section 9
- E. Limitation of Liability, Section 11

#### 15.17 Maryland Law Prevails

The laws of the State of Maryland shall govern the interpretation and enforcement of this Agreement. Following exhaustion of 15.6 Disputes Resolution procedures, any subsequent legal actions arising under this Agreement will be instituted only in the courts of the State of Maryland. As specifically provided by MARYLAND ANNOTATED CODE, SECTION 21-104, the parties agree that computer software purchases made under this agreement shall not be governed by the Uniform Computer Information Transactions Act (UCITA) as adopted in Maryland under Title 21 of the Commercial Law article of the Maryland Annotated Code, as amended from time to time. This agreement shall be governed by the common law of Maryland relating to written agreements, as well as other statutory provisions, other than UCITA, which may apply, and shall be interpreted and enforced as if UCITA had never been adopted in Maryland.

#### 15.18 Severability

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable.

#### 15.19 Section Headings

The heading appearing at the beginning of the several sections making up this Agreement have been inserted for identification and reference purposes only and will not be used in the construction and interpretation of this Agreement.

#### 15.20 Remedies

All rights conferred under this Agreement or by any other instrument or law will be cumulative and may be exercised singularly or concurrently.

#### 15.21 Subcontracting and Assignment

A. Except as explicitly set forth in this Agreement, Contractor may not subcontract any portion of the Services provided under this Agreement without obtaining the prior written approval of the UMUC, whichever is applicable, nor may Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of UMUC. Such written approval will be in the form of a modification to this Agreement. UMUC shall not be responsible for the fulfillment of Contractor's obligations to subcontractors. Any such subcontract or assignment shall be subject to any terms and conditions that UMUC deems necessary to protect its interests. Contractor shall remain responsible for performance of all Services performed by subcontractors under this Agreement, and shall be subject to liability to UMUC for acts and omissions of subcontractors subject to Section 11, Limitation Liability of this Agreement.

B. Contractor agrees that all Services provided by Contractor under this Agreement including any amendment(s) to this Agreement will be performed by employees or consultants or subcontractors of Contractor who have executed work-for-hire agreements with or who have assigned their work to Contractor as appropriate. Contractor shall only engage consultants or subcontractors who have agreed to comply with Sections 5, 6, and 7 of this Agreement as if they were a party hereto. Contractor and UMUC agree that UMUC is a third party beneficiary of such engagement agreements and UMUC has the right, but not the obligation, to enforce such engagement agreements in its own name. Contractor acknowledges and agrees that it is responsible under this Agreement for the acts and omissions of its consultants.



C. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Contractor may assign this Agreement to any parent, subsidiary, affiliate or purchaser of all or substantially all its assets, or via a merger, with notice to UMUC. Contractor may designate a third party to receive payment without UMUC's prior written consent unless in conflict with Maryland or federal law, but shall provide UMUC with notification thereof.

#### 15.22 No Third Party Beneficiaries

This Agreement is only for the benefit of the undersigned parties and their permitted successors and assigns. Except as provided in 15.21.B of this Agreement, no one shall be deemed to be a third party beneficiary of this Agreement.

#### 15.23 Contract Integration and Modification

This Agreement and the documents incorporated herein form the entire agreement of the parties with respect to the subject matter of this procurement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may be amended with the written consent of both parties.

#### 15.24 Relationship of the Parties

Each party is acting as an independent contractor and not as employee, agent, partner, or joint venturer with the other party for any purpose. Except as provided in this Agreement, neither party will have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

#### 15.25 Business Continuity Plan

Contractor represents and warrants that it currently has certain business continuity plans in place throughout its organization that will be used in case of a disaster or other event that could result in the interruption of Contractor's capability to perform its obligations to UMUC under this Agreement. Contractor agrees that its plans include reasonably prudent back-up business resumption and disaster recovery; that it continually maintains its business continuity plans so that they remain current. In addition to Contractor's obligations in Section 7.3, Contractor further agrees to inform UMUC immediately in the event it suffers a disaster or business interruption. Contractor acknowledges that UMUC, at its option, may regard Contractor's failure to comply with the requirements in this Section as a material breach of this Agreement, and that, in such event, UMUC may pursue all available legal remedies, including injunctive and other damages.

#### 15.26 Prohibition on Gifts and Gratuities

Contractor warrants that it has not offered or given, and will not offer or give to any employee or representative or family member of an UMUC employee a payment, gratuity, personal service, entertainment, or gift, other than novelty advertising items of a nominal value (i.e., pens, pencils, calendars, writing pads, clipboards, cups). Legitimate business-related activities (i.e., site inspections, business symposiums, business meals and other Contractor functions) are allowed. Any other offerings may be construed as Contractor's attempt to improperly influence decisions at UMUC. Contractor agrees that UMUC may, by written notice to Contractor, terminate this Agreement if UMUC determines that Contractor has violated this provision.

15.27 Insolvency. In addition to and not in conflict with the provisions in Section 12 of this Agreement, either party may terminate this Agreement if the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

15.28. Time is of the Essence. For all those sections of this Agreement where a number of days or time frame is required, Contractor and UMUC acknowledge and agrees that time is of the essence as to the production and

delivery of all products and services hereunder. Contractor and UMUC acknowledge, however, that the services hereunder are joint and iterative, such that delay by one party in complying with its obligations may affect the other party's ability to meet any agreed upon schedule. If and to the extent the delay by one party is caused by delay by the other party, such delay will not violate this provision.

16. ENTIRE AGREEMENT. The parties agree that this Agreement, including without limitation any Amendments, and other Attachments, and Exhibits thereto, constitutes the complete and exclusive statement of the agreement between them as to the specific subject matter hereof. In the event that Contractor enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with Customer's employees or students, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply.

IN WITNESS WHEREOF, the parties, by their authorized representatives have executed this Agreement.

UNIVERSITY OF MARYLAND  
UNIVERSITY COLLEGE

\_\_\_\_\_

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

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

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

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

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

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

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

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

**APPENDIX A  
CONTRACT AFFIDAVIT**

(This affidavit is a mandatory contract addendum in accordance with USM Procurement Policies and Procedures, but it is only required from the successful Contractor.)

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the (title) SAMPLE and the duly authorized representative of (business) SAMPLE and that I possess the legal authority to make this Affidavit on behalf of myself and the contractor for which I am acting.

**B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic\_\_\_\_) (foreign\_\_\_\_) [check one] corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

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

Address: \_\_\_\_\_

(2) Except as validly contested, the Contractor has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due to the State of Maryland prior to final settlement.

**C. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

(1) The undersigned bidder or offeror certifies that, in accordance with State Finance & Procurement Article, §17-705:

(i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement; and

(ii) it is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702.

(2) The undersigned bidder or offeror is unable to make the above certification regarding its investment activities in Iran due to the following activities:

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C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Proposal Affidavit dated \_\_\_\_\_, 20\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

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

APPENDIX S  
SOLICITATION TERMS AND CONDITIONS

## **APPENDIX S**

### **SOLICITATION TERMS AND CONDITIONS**

#### **1. Contractor's/Proposer's Responsibility.**

Proposers are advised to read the requirements very carefully to ensure that each requirement is understood. If in doubt, develop and submit applicable questions, in writing to the contact at the Issuing Office per the RFP. A Proposer's misinterpretation of requirements shall not relieve the Proposer of responsibility to accurately address the requirements of the RFP or to perform the contract, if awarded. UMUC will enter into a contractual agreement with the selected Contractor only. The selected Contractor shall be solely responsible for all services as required by this RFP. Subcontractors, if any, will be the responsibility of the primary Contractor and the role of subcontractors must be clearly identified in the proposal. The use of a subcontractor(s) does not relieve the Contractor of liability under this contract.

#### **2. General Requirement.**

Proposals must be made in the official name of the firm or individual under which business is conducted, showing the official business address, state in which it is incorporated or organized (if Proposer is not an individual) and must be signed by a duly authorized person. Proposals must be prepared in writing, simply and economically, providing a straightforward, concise description of the Proposer's proposal for meeting the required specifications of this procurement. Proposers must paginate each proposal volume and are requested to provide tabs to separate responses to the technical criteria.

#### **3. Receipt of Proposals.**

Proposals will not be opened publicly; nor, can the identity of Proposers (individuals or entities) submitting proposals ("Proposers") be disclosed prior to actual contract award.

#### **4. Duration of Offers.**

Proposals (Technical Proposal and, if applicable, Price Proposal) submitted in response to this solicitation are irrevocable for 120 days following the closing date of the Price Proposal due date. This period may be extended by mutual agreement between the vendor and the University.

#### **5. Rejection or Acceptance of Proposals.**

The University reserves the right to accept or reject any and all proposals, in whole or in part, received as a result of this RFP, to waive minor irregularities, to negotiate in any manner necessary to best serve the interest of the University. Further, the University reserves the right to make a whole award, multiple awards, a partial award or no award at all. Proposers judged by the procurement officer not to be responsible or Proposers whose proposals are classified as not reasonably susceptible of being selected for award shall be so notified. The University reserves the right to increase or decrease the quantities of any materials, equipment, supplies or services.

#### **6. Cancellation of the RFP.**

UMUC may cancel this RFP, in whole or in part, at any time.

#### **7. Incurred Expenses.**

Neither UMUC nor the State of Maryland is responsible for any expenses that Proposers may incur in preparing and submitting proposals or in making oral presentations of their proposals, if required.

#### **8. Payment.**

The State of Maryland usually provides payments on a net 30 day basis for UMUC approved invoices. Payment provisions shall be in arrears, with late payment and interest calculated as provided by Maryland law. For purposes of determining whether a prompt-payment discount, if applicable, may be taken by UMUC, the starting date of such reckoning period shall be the later of the date of a properly executed invoice or the date of completion of service and/or delivery of product.

#### **9. Electronic Funds Transfer ("EFT").**

If the annual dollar value of this contract will exceed \$500,000.00, the Bidder/Offeree is hereby advised that electronic funds transfer (EFT) will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants the Contractor an exemption. By submitting a response to this solicitation, the Offeror agrees to accept payment by electronic fund transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the form attached as Appendix D, the GAD X-10 Contractor EFT Registration Request Form. This form is to be submitted directly to the Comptroller's Office (not to UMUC). Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The form is available as a pdf file on the web site of the General Accounting Division of the Comptroller of Maryland. That web address is:  
<http://compnet.comp.state.md.us/gad/agencyinfo/agencyeft.asp>

#### **10. Procurement Regulations.**

This RFP shall be conducted in accordance with USM Procurement Policies and Procedures. The procurement method is Competitive Sealed Proposals. The text of the Policies and Procedures is available at <http://www.usmd.edu/regents/bylaws/SectionVIII/VIII300.html>.

#### **11. Confidentiality.**

An Proposer should give specific attention to the identification of those portions of the proposal that the Proposer deems to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland. Proposers are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination as to whether the information

may or may not be disclosed to the requesting party. That decision will take into consideration the Proposer's position regarding its proposal. A blanket statement by a Proposer that its entire proposal is confidential or proprietary will not be upheld.

**12. Demonstration /Discussion Sessions. - Refer to Section III of the solicitation.**

**13. Evaluation of Offers. – Refer to Section III of the solicitation.**

**14. Proposal Affidavit and Certifications.**

State procurement regulations require that proposals contain certifications regarding non-collusion, debarment, cost and price, etc. The affidavit form, which should be completed by all respondents and returned with their respective responses, is included as **Appendix A** of the RFP.

**15. Economy of Preparation.**

Proposals should be prepared simply and economically, providing a straightforward, concise description of the contractor's offer to meet the requirements of the RFP.

**16. Multiple Proposals.**

Contractors may not submit more than one proposal.

**17. Alternate Solution Proposals.**

Contractors may not submit an alternate to the solution given in this RFP.

**18. Telegraphic/Facsimile Proposal Modifications.**

Contractors may modify their proposals by telegraphic, e-mail, or facsimile communication at any time prior to the due date and time set to receive proposals provided such communication is received by the State issuing agency prior to such time and, provided further, the State agency is satisfied that a written confirmation of the modification with the signature of the proposer was mailed prior to the time and date set to receive proposals. The communication should not reveal the proposal price but should provide the addition or subtraction or other modification so that the final prices, percent or terms will not be known to the State agency until the sealed proposal is opened. If written confirmation is not received within two (2) days from the scheduled proposal opening time, no consideration will be given to the modification communication. No telephone, telegraphic, or facsimile price proposals will be accepted.

**19. Contractor Responsibilities and Use of Subcontractors**

The University of Maryland University College shall enter into contractual agreement with the selected offering contractor(s) only. The selected contractor(s) shall be responsible for all products and/or services required by this RFP. UMUC will consider proposals that reflect primary and secondary service providers or prime/subcontractor relationship. There should be proof of ability of the primary to manage a subcontractor and successfully coordinate the delivery of quality service and support in a timely manner. Subcontractors, if any, shall be identified and a complete description of their role relative to the proposal shall be included. University of Maryland University College's intent is not to direct the use of any particular subcontractor, however, the contractor will not contract with any such proposed person or entity to whom University of Maryland University College has a reasonable objection. Notification of such objection will be made by University of Maryland University College within 15 days of contract. The contractor shall be fully responsible for the acts and omissions of its subcontractors and of persons directly or indirectly employed by them. The use of subcontractors does not relieve the contractor of liability.

**20. Access to Contractor Records for Quality Assurance and Auditing Purposes.**

The Contractor and its principal subcontractors must provide access to pertinent records by University personnel or its representatives (including internal auditors, external auditors, representatives, or agents) to provide quality assurance and auditing.

**21. Arrearages.**

By submitting a response to this solicitation, a contractor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits and that it shall not become so in arrears during the term of the contract if selected for contract award.

**22. Taxes.**

University of Maryland University College is exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes, except as noted in applicable sections of COMAR. Exemption Certificates shall be provided upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, Contractor shall pay the Maryland Sales tax and the exemption does not apply.

**23. RFP Response Materials.**

All written materials submitted in response to this RFP become the property of University of Maryland University College and may be appended to any formal documentation, which would further define or expand the contractual relationship between University of Maryland University College and the successful contractor(s).

**24. Debriefing of Unsuccessful Offerors.**

Unsuccessful proposers ("Offerors") may request a debriefing. If the proposer chooses to do so, the request must be submitted in writing to the Procurement Officer within ten days after the proposer knew, or should have known its proposal was unsuccessful. Debriefings shall be limited to discussion of the specific proposer's proposal only and not include a discussion of a competing offeror's proposal. Debriefings shall be conducted at the earliest feasible time.

The debriefing may include information on areas in which the unsuccessful proposer's proposal was deemed weak or insufficient. The debriefing may NOT include discussion or dissemination of the thoughts, notes or ranking from an individual evaluation committee member. A summarization of the procurement officer's rationale for the selection may be given.

## **25. Maryland Public Ethics Law, Title 15.**

The Maryland Public Ethics Law prohibits, among other things: State employees or officials (and in some cases, former employees) and businesses in which such an individual is employed or holds a financial interest from (i) submitting a bid or proposal, (ii) negotiating a contract, and (iii) entering into a contract with the governmental unit with which the individual is affiliated per the Maryland Code, State Government Article, SS 15-502.

If the bidder/offeree has any questions concerning application of the State Ethics law to the bidder/offeree's participation in this procurement, it is incumbent upon the bidder/offeree to see advise from the State Ethics Commission: The Office of The Executive Director, State Ethics Commission, 9 State Circle, Suite 200, Annapolis, MD 21401. For questions regarding the applicability of this provision of the Public Ethics Law, contact the State Ethics Commission, toll-free phone number 877-669-6085, or see the website [ethics.gov.state.md.us](http://ethics.gov.state.md.us). The procurement officer may refer any issue raised by a bid or proposal to the State Ethics Commission. The procurement officer may require the bidder/offeree to obtain advise from the State Ethics Commission and may reject a bid or proposal that would result in a violation of the Ethics law.

The resulting contract is cancelable in the event of a violation of the Maryland Public Ethics Law by the contractor or any State of Maryland employee in connection with this procurement.

## **26. Assistance in Drafting.**

Under the State Government Article § 15-508 of the Annotated Code of Maryland, an individual or person who employs an individual who assists an executive unit in drafting specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or request for proposals may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement. For questions regarding the applicability of this provision of the Public Ethics Law, contact the State Ethics Commission, toll-free phone number 877-669-6085, or see the website [ethics.gov.state.md.us](http://ethics.gov.state.md.us)

## **27. Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained in the following section entitled *Living Wage Requirements for Service Contracts*. If the Offeror fails to complete and submit the required Living Wage documentation, the State may determine an Offeror to be not responsible.

The Living Wage rates change each year and are published 90 days from the end of the State fiscal year. Living Wage rates may be found at <https://www.dllr.state.md.us/labor/prev/livingwage.shtml>

The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

END OF APPENDIX S