



DATE: February 15, 2016

TO: All Potential Proposers

FROM: Valerie Rolandelli  
Associate Vice President  
301-985-7895

RE: RFP 91372 – MEEC IT Professional Consulting Services  
Addendum #1 dated 02/15/2016

The following amends the above referenced Solicitation documents and is issued to all potential Proposers. Receipt of this addendum is to be acknowledged by completing the enclosed "Acknowledgement of Receipt of Addenda Form" and including it in the Technical Proposal submittal.

1. The due date and time for **Technical Proposals REMAINS as Friday, February 26, 2016, on or before 11:59 p.m.** Per Section I of the solicitation document, Technical Proposals are to be provided electronically to the Issuing Office (Paragraph 2) in accordance with Proposal Closing Date/Due Date and Time (Paragraph 6). Late proposals cannot be accepted.
2. Attached please find a question with response log. This log provides responses to most of the questions received by February 12, 2016, the due date for questions. Subsequent addenda will provide the balance of the responses.
3. The Sample Master Contract is attached to this addendum. Refer to Section I, Paragraph 9 and Section III, Article 1, Paragraph 2.9 regarding this Contract. It is being provided in both pdf and Word format.

End of Addendum 1 dated February 15, 2016

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM**

**RFP NO.:** 91372

**TECHNICAL PROPOSAL DUE DATE:** Friday, February 26, 2016 on or before 11:59 pm EST.

**RFP FOR:** MEEC IT Professional Consulting Services

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

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

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

Addendum No. <u>1</u>	dated <u>02/15/2016</u>
Addendum No. <u>   </u>	dated <u>   </u>
Addendum No. <u>   </u>	dated <u>   </u>
Addendum No. <u>   </u>	dated <u>   </u>
Addendum No. <u>   </u>	dated <u>   </u>

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

END OF FORM

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
<b>Questions - Addendum No. 1</b>					
1.	1	Appendix A	page 34 – Staff Resources Chart	Can you please clarify if these are the number of FTE’s we currently have as employees on active payroll or is this the number that we can provide as a result of our network from current/prior engagements?	The column for “W-2’s staff” is for the number of FTE’s the firm currently has as employees on active payroll. The column for “1099 Staff” is for consultants that the firm could provide as a result of its network of consultants.
2.	1	Section III, Article 1 Technical Proposal Requirements	Page 20 of 72, Section 2.1 Firm Profile :	Can the vendor supply <b><u>ONE Firm Profile response</u></b> to address all <b><u>SIX</u></b> IT Professional Consulting Services category (ERP Implementation, Change Management/Strategic Planning, Technology Management, Transition to Cloud, and Analytics) including the sub-set of questions <b><u>—OR—</u></b> just the vendor need to response with <b><u>SIX responses</u></b> to each IT Professional Consulting Services categories including the sub-set questions?	Yes, the Vendor can supply one firm profile, however, it must provide sufficient information so that the Evaluation Committee can evaluate the firm’s profile in all of the IT Professional Consulting Services for which the Proposer wants to be considered.
3.	1	Section III, Article 1 Technical Proposal Requirements	Page 22 of 72 : 2.2 Firm Experience	Can the vendor supply <b><u>THREE Firm Experience response</u></b> to address all <b><u>SIX</u></b> IT Professional Consulting Services category (ERP Implementation, Change Management/Strategic Planning, Technology Management, Transition to Cloud, and Analytics) including the sub-set of questions <b><u>—OR—</u></b> just the vendor need to response with <b><u>THREE responses</u></b> to each IT Professional Consulting Services categories including the sub-set questions?	Yes, the vendor can supply 3 Firm Experience responses to address all 6 IT Professional Consulting categories, however, sufficient evidence/information of the services provided for each of the clients must be provided so that the Evaluation Committee can evaluate the firm’s experience in all of the IT Professional Consulting Services for which the Proposer wants to be considered.

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
4.	1	RFP Section III, Article 1 Technical Proposal Requirements	Paragraph 2.9 – Acknowledgement of Review of USM/MEEC Master Agreement	RFP Section III, sub-section 2.9 indicates any exceptions to the terms and conditions of the Master Contract be provided with the technical proposal, while #9 of the Transmitter Letter-Technical Proposal requires a signature of the bidder indicating it accepts the terms and conditions “as is.” If bidders wish to include exceptions with their proposal, must they still sign #9 or can bidders include a clarification statement with the signature to #9 indicating it wishes to discuss its included exceptions?	Proposers may include a clarification statement with the signature to #9 indicating it is providing exceptions to the Contract. The Technical Proposal must include any contract exceptions. Refer to Section II, Article 1, Paragraph 2.9 for information regarding contract exceptions. For brevity, USM/MEEC only listed the title of the paragraph on the transmittal letter.
5	1	Appendix A	Bid/Proposal Affidavit	While we agree with most of the content of the required affidavits and, specifically, of #6 of the Transmittal Letter-Technical Proposal: the Bid/Proposal Affidavit (as also referenced in Section C of the ‘Contract Affidavit’), it may need to include certain clarifications or amendments to sign the affidavit(s) accurately. Can bidders clarify or amend the content of the affidavit(s) inclusive of specifically the Bid/Proposal Affidavits in order to accurately sign them?	Bid/Proposal Affidavits MUST be completed and signed ‘as is’. Revisions or amendments to the affidavit will not be accepted by USM/MEEC. The affidavit is prescribed by Maryland law.
6	1	Section II	Scope of Work	Is MEEC looking for IT Consulting outside of ERP Systems? The RFP is geared to ERP. But makes mention of “other IT services”.	Per Section I, Paragraph 1.2: “MEEC will require a <u>full range of IT Professional Consulting Services Contractors</u> to assist in the effort of developing, maintaining and optimizing existing and new IT systems for MEEC members, <u>primarily for ERP systems</u> , including cloud based and/or self-hosted

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					solutions.” <b>Per Section II, Paragraph 1:</b> The purpose of the IT Professional Services Initiative is to select multiple IT Professional Services Contractors capable of partnering with the USM/MEEC and its Members to provide ongoing ‘on-call, as needed’ services related primarily for ERP systems used in an educational environment, however, the resulting contracts may also be used for adhoc consulting for a variety of technology organizational and system needs. Throughout the RFP document, it states ‘primarily ERP systems’, so it is not limited to professional services for only those systems. Refer also to the categories of services stated in Section II, paragraph 2.1.
7	1	General	Solicitation Schedule	Are the technical proposal and the price proposal are due on the same day i.e. February 26, 2016, on or before 11:59 p.m?	NO, Per the RFP, Solicitation Schedule, on page 3, ONLY the Technical Proposal is due on February 26, 2016, on or before 11:59 pm.
8	1	Section II	Scope of Work	What are the Oracle modules that are implemented and in use? What is the current version of these applications?	This can vary widely from MEEC Member to MEEC member. This information would be provided in a Task Order Request for Proposal (TORP) issued by a Buying MEEC Member as may be applicable to the work to be provided.

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
9	1	Section II	Scope of Work	For how long is the current version of the Oracle applications running?	See response to Question 8 above.
10	1	Section II	Scope of Work	How stable are the current applications (in scope)? What are the current challenges and pain points?	See response to Question 8 above.
11	1	Section II	Scope of Work	What is the support hours expected for Application Managed Service (8x5, 16x5, 24x7 etc.)? If so which applications will require round the clock support?	See response to Question 8 above.
12	1	Section II	Scope of Work	In which onsite location should our resources be staffed to or provide Professional Consulting Services ?	All MEEC Members are located in Maryland, however, some users are global. This would be addressed in the Buying MEEC Member's TORP.
13	1	Section II	Scope of Work	Is the IT application roadmap established? If so, can you provides us your future roadmap for us to understand the Professional Consulting Services required.	See Response to Question 8 above.
14	1	Section II	Scope of Work	Who supports the applications in scope? Is it in-house or outsourced to a vendor?	See Response to Question 8 above.
15	1	Section II	Scope of Work	What is the mode of connectivity for the resources working remotely?	See Response to Question 8 above.
16	1	General		What is the background on why MEEC issued this RFP at this time? Are there immediate needs anticipated among MEEC's members?	MEEC Members have expressed interest to the MEEC Executive Director for such service contracts. Technology needs are constantly and consistently being identified. There

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
					are no immediate needs known at this time.
17	1	General		How many firms received this RFP?	This is an open procurement. Any firm who requests the document may receive it.
18	1	General		Does MEEC have a target for the number of service providers with whom it would like to establish Master Contracts?	No, MEEC does not have a pre-disposed number of Master Contracts that will be established.
19	1	General		Has MEEC worked with vendors previously for similar services? If so, how many vendors were selected as a result of those RFP efforts? How many Master Contracts resulted from those efforts?	MEEC has never procured Master Contracts for IT Professional Consulting Services. Buying MEEC Members may have such contracts that may have been procured by its own organization/institution. A listing of current MEEC contracts may be found at <a href="http://meec-edu.org/">http://meec-edu.org/</a> see tabs "hardware"; "software"; and "services".
20	1	General		Can you provide a brief overview of the types of engagements where you have previously engaged outside support? If possible, can you include a description of the work and approximate size of the engagements?	This may vary widely from Buying MEEC Members. Engagements could be for a variety of needs (such as assessments for new initiatives to new implementations of selected technology systems.)
21	1	General		We understand that there are no guarantees that MEEC will issue any task orders and no minimum dollar amounts shall be committed. However, does MEEC anticipate an estimated volume of project work that may occur under these Master Contracts?	MEEC does not have an estimated volume of project work. However, it is known that MEEC members often utilize Master Contracts as purchases made under such Master Contracts are very favorably priced; contract terms and conditions have been negotiated;

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
					and the required procurement process is minimal.
22	1	Section II	Scope of Work	What products and tools are currently deployed by MEEC's members in regard to the in-scope areas described in the RFP?	These vary widely among the MEEC members. There are not standard products and/or tools that apply to all MEEC members.
23	1	General		Are there current plans among MEEC's members to address any of the in-scope areas described in the RFP imminently (e.g., within the first 3-6 months of establishing the Master Contracts)?	None that are known at this time.
24	1	General		Are there any strategic direction documents, blueprints, etc., related to Cloud solutions that have been developed by MEEC or a prior consultant? Are those deliverables shareable to use as a starting point in our bid?	This would vary widely among MEEC members. It would not be possible to address this question for all MEEC members. Each Task Order Request for Proposal (TORP) from a Buying MEEC Member would address such direction.
25	1	General		Do MEEC's members leverage specific training methodologies and/or firms today? If so, what are they?	See response to Question 8 above.
26	1	Appendix C	Sample Contract	Can you send us the Terms and Conditions that you will desire to use for this agreement? When will the Sample Contract be issued to potential proposers?	The Contract that will be issued to the Master Contractors is attached to this Addendum 1. Per the RFP, Section I, Paragraph 9: "By submitting an Offer (i.e. the firm's Technical and/or Price Proposal, either individually or collectively, is/are considered an Offer), the Contractor warrants that



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					<p>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 USM/MEEC. The awarded Master Contractors should not assume that any term and condition of the Master Contract is negotiable.” Per Section III, Article 1, Paragraph 2.9, within the Technical Proposal, Proposers are to: <b>“Acknowledgement of Review of USM/MEEC Sample Master Contract: Per Section I, Paragraph 9, the Proposer is to warrant that they have reviewed Appendix C and will execute such a contract upon request by USM/MEEC, as may be negotiated. Any exceptions to the USM/MEEC Sample Master Contract are to be provided in the Technical Proposal. Proposer is to also acknowledge that USM/MEEC 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 Master Contract(s).”</b></p> <p>Due to the magnitude of Master Contracts that are anticipated to be awarded by USM/MEEC as a result of this solicitation, it is anticipated that</p>

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					minimal negotiations of terms and conditions will occur.
27	1	Section III, Article 2	Evaluation of Technical Proposals	RFP page 26, Section III, Article 2 – Evaluation of Technical Proposals identifies multiple evaluation elements in subsection 1.3.1 parts a through l. Is there a distribution of points assigned to the parts a through l for the MEEC evaluation?	Section III, Article 2- Evaluation of Proposals, paragraph 1.3.2 lists the order of importance of the technical criteria. The Evaluation Committee is not required to utilize points in the evaluation process.
28	1	Section III, Article 2	Evaluation of Technical Proposals	RFP page 27, Section III, Article 2 – Evaluation of Technical Proposals identifies multiple evaluation elements in Subsection 1.3.2 parts 1 through 3, with reference to Section III, Article 1, Paragraphs 2.1 through 2.4. Is there a distribution of points assigned to the parts 1 through 3 on page 27 or 2.1 through 2.4 on pages 20-24?	See response to Question 27 above.
29	1	Section III, Article 1	Technical Proposal	Is there a maximum or preferred page length for the technical proposal response?	No, there is not a maximum or preferred page length, but we do ask that Proposers be succinct in their responses.
30	1	Section I	Paragraph 10. Term of Contract	If a Contractor responds to the above referenced RFP and is not awarded a Master Contract, would they be permitted to respond again during an Expansion Window mentioned on page 10 of the solicitation?	Yes

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31	1	Section II, Article 2	Evaluation of Proposals	Who will be on the reviewing panel?	A cross section of MEEC Members will comprise the Evaluation and Selection Committee. Individual names of evaluators and the individual MEEC member organization they represent are confidential.
32	1	Section II, Article 1 and Section II, Article 2	Technical Proposal Requirements and Evaluation of Proposals	How heavily will references be weighted? If an Education Customer cannot be identified for a section of this RFP will that disqualify the proposal?	Refer to Section III, Article 2, Paragraph 1.3.2 for the relative weight of the technical criteria. Refer to Section III, Article 1, Paragraph 2.2, regarding Firm Experience: “.... <b>A minimum of one (1) project/contract must be for an educational client,</b> with higher consideration in the evaluation if more than one is for an educational client.” By this statement, educational experience is very important to USM/MEEC.
33	1	General		When responding - if we are responding to 2 categories – can we answer in one document with two sections?	Yes
34	1	General		If a provider has a Master Agreement, can they offer services outside the “awarded category” to the members?	Not under the resulting Master Agreement or any TORP issued by a Buying MEEC Member under the Master Agreement.

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35	1	Section II, Scope of Work and Section III, Article 3, Price Proposal		If a company is on this contract, are the prices set – or is there additional negotiation done within the individual scopes of work?	Refer to Section III, Article 3, Price Proposal and Section II, Paragraph 3.1 (a) (2) (g) for answers to this question.
36	1	General		Of the work being done under this agreement – what is the breakdown of work that is K-12, vs Higher education?	This is unknown and cannot be quantified.
37	1	Section III, Article 4	Paragraph 3.	What is the scoring weight of technical to price?	We have provided the relative weight by saying that ‘technical weighs greater than price’. As a result, awards may be made to a proposal with a higher technical rankings even if its cost proposal is not the lowest.
38	1	General		Who are the current master contract holders used to procure the services outlined in this RFP for USM/MEEC?	There are no current master contract holders for these services. See answer to Question 19.
39	1	General		How will Task Order Request for Proposals (TORP) be distributed to Master Contract holders? For instance, via email, online posting at a single site, online postings on MEEC member sites, or another method?	The Buying MEEC Member will be responsible for the distribution of TORPs. Buying MEEC Members will comply with their own procurement policies and procedures regarding distribution of TORPs.

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
40	1	Section II Scope of Work		Does USM/MEEC anticipate a heavier volume of implementing one specific ERP system? If so, which one?	This will vary from MEEC Member to MEEC Member. The ERP systems most commonly used have been provided as examples within the RFP.
41	1	Section II Scope of Work		Can USM/MEEC please clarify how it will determine which IT Professional Consulting Category TORPs will be released under? For instance, if the scope of a TORP is to provide change management for an ERP implementation, will the TORP be released under the ERP Implementation, Upgrade and Integration Category or the Change Management/ Strategic Planning Category? Similarly, if a TORP is for Project Management for an ERP implementation, would the TORP be distributed to all contract holders whose master contract includes at least one of those applicable categories?	Determination of which category or categories to distribute a TORP will be at the discretion of the Buying MEEC Member.
42	1	Section III, Article 1	Section 2.1 Firm Profile	Page 20, Section 2.1.a. requests that the Offeror provide number of employees by job category. However, Section 2.4.2 also requests the Offeror complete the form entitled, "Matrix of Available Staff Resources by Positions" that was provided in an attachment. Please clarify if the request in Section 2.1.a also refers to the "Matrix of Available Staff Resources" Form? If so, please confirm that Offerors should only	Section 2.1.a Firm <b>Profile</b> requests that Offerors provide the number of employees by job category across the entire company for all products and/or services provided by the Firm. Section 2.4.2: The "Matrix of Available Staff" for IT Professional Consulting is to be completed to indicate the number of available staff specifically for IT Professional Consulting Services that

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
				submit the Matrix as an appendix per the instructions in Section 2.4.2 and should not include this information in the Firm <b>Experience</b> Section. If not, please clarify what information USM/MEEC would like to see in the Firm <b>Experience</b> Section.	would be available to Buying MEEC Members.  Please note that Section 2.1 is Firm <b>Profile</b> and Section 2.2 is Firm <b>Experience</b> . The author of the question has used “Firm Experience” when it should have been “Firm Profile”. (See highlighted words in question.)
43	1	Section III, Article 3		Page 26, Section 1.3 states, “After compliance with the mandatory requirements...” Can USM/MEEC please clarify what are the mandatory requirements?	The mandatory requirements are to provide responses to Section II, Article 1, Paragraphs 2.1 through 2.9.
44	1	Appendix S	Section 2	Appendix S, Section 2, states that “Proposers must paginate each proposal volume and are requested to provide tabs to separate response to the technical criteria.” As Offerors proposals are to be submitted electronically, please clarify the request to provide tabs in the technical proposal.	Delete the request to ‘provide tabs’.
45	1	Section II Scope of Work		Can you provide us the IT application landscape that should be supported as part of this RFP?	This will vary widely from MEEC Member to MEEC Member. The RFP includes some examples of applications. See Question 8 above.

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
Addendum 2 – To Be issued at a later date					
46		Section II	Scope of Work	We are not certified partners or affiliates with any ERP platforms. We clearly note that the RFP states a preference for suppliers with such partnerships. How will this affect the evaluation of a technical proposal?	
47				Can you provide us the IT application landscape that should be supported as part of this RFP?	
48				Please provide us the geographic distribution of users across applications.	
49				What languages are in scope for this engagement?	
50				Does “change management/strategic planning” refer specifically to projects relating to Information Technology (e.g., IT strategic planning) or also to more general business issues and planning as well?	
51				If we are skilled in more than one technology solution (i.e., enterprise application), can we bid all service categories under one technology solution and some number less than all service categories in one or more other technology solutions?	

	Addendum No.	Solicitation Section	Solicitation Reference	Question	UMUC Response
52				“Other Technology Consulting”. Do you have a definition of other?	
53				Are you interested in roles other than those listed in the chart with Labor Categories?	



MASTER AGREEMENT 91372 - \_\_\_\_\_

This Master Services Agreement (“Master Agreement” or “Agreement” or “Contract”) is made on this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the University of Maryland University College (UMUC) with offices at 3501 University Blvd. East, Adelphi, MD 20783 on behalf of the University System of Maryland /MEEC (“the University” or “USM/MEEC”), with offices at 3300 Metzert Road, Adelphi, MD 20783, and \_\_\_\_\_ (“Contractor” or “\_\_\_\_\_”), with offices at \_\_\_\_\_, FEIN #\_\_\_\_\_.

RECITALS

A. USM/MEEC has requested a proposal (Solicitation RFP #91372) from Contractor for the provision of certain IT Professional Consulting services to USM/MEEC and its Members.

B. Contractor has provided a proposal dated \_\_\_\_\_, 2016, and provided clarifications to this proposal dated \_\_\_\_\_, 2016 (if applicable) as well as a Price Proposal dated \_\_\_\_\_, 2016 as subsequently clarified and amended (collectively the “Proposal”) in response to USM/MEEC's request. As a result, the parties enter into this Agreement to set forth their understanding;

NOW, THEREFORE, USM/MEEC and Contractor agree as follows:

1. NATURE OF THE MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

- a. A Change Order to a Task Order Contract (TOC);
- b. Task Order Contracts (TOC) and/or Statements of Work (SOW), executed from time to time, pursuant to this Master Agreement (each of which is incorporated in this Master Agreement whether or not physically attached). If applicable, the parties will leverage information contained in The Solicitation #91372 and all amendments to the solicitation, as well as Contractor’s Technical Proposal and Price Proposal provided in response to Solicitation #91372, to develop mutually acceptable TOC and/or SOWs. The terms and conditions in TOCs and/or SOWs may supersede this Master Agreement if so indicated in the applicable TOC or SOW.
- c. This Master Contract Form (pages 1 through \_\_\_\_)
- d. Contractor’s Task Order Proposal (TOP) to a Task Order Request for Proposal (TORP);
- e. Buying MEEC Member’s TORP;
- f. RFP 91372 Section III, Article 1, Paragraph 2.4 Staffing of the Contract/Key Personnel

1.1 The Contractor shall perform the Services as described in the applicable TOC or SOW. Services shall be performed in accordance with this Agreement, and in accordance with Sections \_\_\_\_ and \_\_\_\_ below. The Contractor shall perform the Services expeditiously and with professional skill and care.

1.1.1 Change Order Work/Contract Amendments to the Master Agreement: Any change to the scope, the hourly rates, and/or term of the Master Agreement must be documented in a written amendment to this Agreement (“Amendment”) that is signed by both USM/MEEC 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 USM/MEEC

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. USM/MEEC is not obligated to pay for any additional work performed by the Contractor without prior written authorization from the Procurement Officer.

- 1.2 **Implementation Process:** A Buying MEEC Member, at its sole option, may from time to time prepare a document (“Task Order Request for Proposal” or “TORP”) which sets out the Buying MEEC Member’s Service(s) needs. Buying MEEC Members may issue the TORP to one or more of the awarded Contractors, however, the USM Institutions must request more than one of the awarded firms to submit a Task Order Proposal. The Contractor shall submit a Task Order Proposal (“TOP”) to the Buying MEEC Member in response to the issued TORP; such TOP shall include a price proposal based on the applicable rates per this Master Agreement and other information as requested in the TORP for evaluation by the Buying MEEC Member. The TOP will set forth the Contractor’s tasks, deliverables, and schedule. The Buying MEEC Member, at its sole discretion, will select the most advantageous TOP for the award. If Contractor’s Task Order Proposal is accepted by the Buying MEEC Member, the Buying MEEC Member shall issue, as may be applicable to the TORP and negotiated between the Buying MEEC Member and the Contractor, a Task Order Contract (TOC) and/or purchase order (PO) incorporating the TOP, which shall become part of this Agreement. (Exhibit \_\_\_ attached to this Agreement outlines the Implementation Process which may be adapted to the Buying MEEC Member’s specific needs and requirements.)

Where applicable, a TOC, SOW or PO will specify a timeline for the delivery of Services. Both parties are to work diligently and consistently to implement the Services in a commercially reasonable and timely manner. At the Buying MEEC Member’s sole discretion, implementation for any TOC, SOW, or PO may be phased, but may occur concurrently rather than sequentially.

- 1.3 The fees and payment structure for a particular project shall be contained in the applicable TOC, SOW, or PO. Except as otherwise set forth in a TOC, SOW or PO, there are no reimbursable expense associated with this Agreement.

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

1.3.1 The rates provided in the Price Proposal, included as Exhibit \_\_\_ to this Agreement, will be used to negotiate the fees associated with any TOC or SOW including any modifications to same, as well as for contract modifications to this Master Agreement. These hourly rates are the maximum hourly rates for all MEEC members. For a given TORP procured under this Master Agreement, nothing prohibits a Buying MEEC Member from negotiating better hourly rate(s). The Contractor is not obligated to extend any better hourly rate(s) from one MEEC Member to any other MEEC member. The hourly rates are valid through June 30, 2019.

**1.3.2 Prices for Years 4, 5, 6, 7, 8, and 9:** Following the initial three years of the Contract, it will be the responsibility of the Contractor to request a price increase, if any, by April 1 of each year of the Agreement. Any price increase request not received by that time, may not be considered and pricing in the subsequent year will remain as stated during the just completed Agreement term. A price increase, if any shall not exceed the Consumer Price Index (“CPI”) for “All Urban Consumers” as published by the US Department of Labor Statistics or 5% whichever is less. For purposes of calculating the potential increase, the CPI to be used will be the index for twelve-month period ending at the previous calendar year. For example, if the contract year ends June 30, 2019, the price index for twelve-month period ending December 2018 will be used. Statistics will

be referenced as a **cap** for negotiation purposes only. Contractor is not to assume that any price increase will be applied to yearly renewals. As well, increases are not cumulative for prior years; if a Contractor fails to request a price increase in one year and then requests an increase for the subsequent year, the Contractor cannot include a cumulative amount which includes the prior annual term. Any increase approved by USM/MEEC will take effect on July 1st of each year and be effective for a minimum of twelve (12) months.

**1.3.3 Task Order Change Order Work/Task Order Contract Amendments:** Any change to the scope, fees, schedule of the Services being performed, or staffing changes under a TOC, SOW or PO must be documented in a written amendment to the TOC, SOW, or PO, whichever is applicable, that is signed by both the Buying MEEC Member and the Contractor. Amendments must be issued to the Contractor by the designate person of the Buying MEEC Member and signed by both Contractor and the designated person of the Buying MEEC Member prior to the work being performed. The Buying MEEC Member is not obligated to pay for any additional work performed by the Contractor without prior written authorization from the designated person of the Buying MEEC Member. 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 writing via appropriate project management documentation procedures that have been implemented, and agreed to by both parties for the TOC, SOW, or PO.

1.4 USM/MEEC will designate a staff member to act as contract coordinator (“MEEC Contract Manager”) between USM/MEEC and the Contractor for issues regarding the Master Contract. For any TOC, SOW, or PO done under the Master Agreement, the Buying MEEC Member will designate a staff member to act as coordinator (“Project Manager”). Throughout the period of the TOC, SOW or PO, 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 Buying MEEC Member personnel designated by the Project Manager.

1.5 The dedicated Account Representative(s) for the Buying MEEC Members and the Executive Manager for the MEEC Executive Director shall be the same team identified in the Contractor's submittal responding to USM/MEEC'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 USM/MEEC. 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, USM/MEEC, 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.

USM/MEEC 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 USM/MEEC. If such a request is made, Contractor is to a) remove the person from USM/MEEC within the time frame specified by USM/MEEC; 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 USM/MEEC, 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 USM/MEEC and the execution of a Contract Amendment.

The Contractor's on-site representatives for any TOC, SOW, or PO shall manage the Work of its own staff and coordinate the Work with the activities and responsibilities of the Buying MEEC Member to complete the Work in accordance with the TOC, SOW, or PO. 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 the Buying MEEC Member's Project Manager.

Unless stated otherwise in a TOC, SOW, or PO, 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 USM/MEEC in writing as they occur.

This paragraph 1.5 also applies to the Key Personnel identified in the Contractor's response to a Buying MEEC Member's TORP.

- 1.6 Contractor Team Organization and Staffing – For any TOC, SOW, or PO, the Contractor's Project Manager and USM/MEEC's Buying MEEC Member's Project 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 the Buying MEEC Member and the Contractor, staffing resources levels will be evaluated and adjusted to suit the Buying MEEC Member's project needs. If the Contractor's Project Manager and Buying MEEC Member's Project 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 Buying MEEC Member's Procurement Officer as may be appropriate.

- 1.7 Project Plan  
If a comprehensive Project Plan is not included in the Buying MEEC Member's TORP, for each TOC, SOW, or PO, the Contractor and the Buying MEEC Member will collaboratively develop a comprehensive project plan. The Buying MEEC Member and Contractor shall mutually agree upon the project management tools to be utilized. Any final plan shall be mutually agreed upon. If applicable, a high level, draft project plan was provided by the Contractor to the Buying MEEC Member within its Task Order Proposal as well as at the discussion sessions, if applicable. However, this project plan was provided for information and evaluation purposes only and both are subject to change in accordance with this Section 1.7. Contractor affirms that the required project

methodology was included in the draft Work Plan and has been accounted for within the Contractor's Task Order Proposal and will be accounted for in the final approved project plan described in this section.

During the planning phase, the Contractor and Buying MEEC Member may, if the TORP requires, collaboratively develop a comprehensive Project Plan and detailed Statement of Work (SOW). The Buying MEEC Member and Contractor shall mutually agree upon the project management tools to be utilized. USM/MEEC will have the final approval authority of the Project Plan and the SOW.

Components of the Project Plan and/or SOW may 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 Buying MEEC Member's 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 Buying MEEC Member
- Evaluation and Acceptance Procedures for the milestones and/or deliverables as applicable (see 1.7.1 below.)
- 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
- If applicable, 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,
- If applicable, 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 Task Order 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 task order 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 1.3.3 for those revisions that require contract amendments.

#### 1.7.1 Evaluation and Acceptance Procedures

- a) The evaluation and acceptance procedures should be defined by the Buying MEEC Member in each TOC, SOW, or PO.
- b) However, absent such evaluation and acceptance procedures, or unless specifically stated otherwise in the Project Plan or SOW that is developed in accordance with Section 1.7 above, the following procedures will apply:

- i) Upon completion and delivery of each Deliverable, the Buying MEEC Member will begin the evaluation and acceptance process, which shall include, but not be limited to, the steps described below. Contractor will notify the Buying MEEC Member in writing that the Deliverable has been completed.
- ii) Within ten (10) business days, unless another time period is mutually agreed, of receipt by the Buying MEEC Member of a scheduled Deliverable, the Buying MEEC Member shall determine whether such Deliverable Materially Conforms to the specifications defined in the TOC, SOW, or PO. 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 TOC, SOW, or PO, then the Buying MEEC Member will provide written confirmation to Contractor that the Deliverable is accepted.
- iii) If the Deliverable does not Materially Conform, the Buying MEEC Member 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 the Buying MEEC Member within the time period specified, which shall be at least ten (10) business days, for re-testing by the Buying MEEC Member, which re-testing shall be limited to the previously identified deficiencies, unless the Buying MEEC Member 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 Buying MEEC Member 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 the Buying MEEC Member 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.
- iv) Notwithstanding the foregoing provisions of this Section, approval of a Deliverable shall be deemed given by the Buying MEEC Member if the Buying MEEC Member has not delivered to Contractor a notice of deficiencies for such Deliverable prior to the expiration of any period for the Buying MEEC Member review thereof as set forth in this Section, or if Buying MEEC Member uses the Deliverable in production.
- v) 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.
- vi) 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.

1.8 Operations Meetings - At the sole discretion of the Buying MEEC Member, Operations Meetings may be held on a regular basis for a TOC, SOW, or PO. The agenda for such meetings will be mutually developed. A kick-off meeting to the TOC, SOW, or PO 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 the TOC, SOW or PO, 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 1.7 above for the Services.

The Contractor's Project Manager or designee will co-lead the meetings. Meeting notes will be provided to Contractor's Executive Manager and Buying MEEC Member's Project Manager for review and feedback prior to distribution to all attendees and other designees indicated by the Buying MEEC Member's Project Manager. Other representatives of the Buying MEEC Member 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 - The Buying MEEC Member may establish an Executive Steering Committee that will drive decisions. The Buying MEEC Member, at its sole discretion, may include the Contractor's Executive Manager as needed.

1.10. The responsibilities of Contractor under Section 1 shall be subject to and in accordance with all provisions of this Agreement. Contractor shall be responsible for all obligations under this Agreement on its part, whether or not Contractor performs such obligations by or through a subcontractor or other entity. For all purposes of this Agreement, Contractor shall be responsible for the acts or omissions of its subcontractors or other entities providing goods or services under or with respect to this Agreement and for its or their representatives (both at any tier), whether or not permitted under this Agreement.

1.11 There is no Minority Business Enterprise (MBE) goal set for the overall spend applicable to the Master Agreement, however, a Buying MEEC Member may establish a MBE goal as part of the Task Order Request for Proposal process (TORP). MBE goals, if any, will comply with the Buying MEEC Member's jurisdiction regarding such socio-economic programs. For those Buying MEEC Members subject to the State of Maryland's MBE Program, the requirements and obligations of Appendix \_\_\_ of this Agreement apply.

1.12 Small Business Reserve (SBR) - If the Buying MEEC Member's procurement policies and procedures allow the right to designate any TORP issued under the Master Agreements as a Small Business Reserve, or similar program, the Buying MEEC Member reserves the right to do so. For those Buying MEEC Members who are subject to the Annotated Code of Maryland, the resulting TO Contract may only be awarded to a Master Contractor that is a certified small business, that meets the statutory qualifications of a Small Business as defined in §14-501(c), State Finance and Procurement (SFP) Article, Annotated Code of Maryland, and is registered with the Department of General Services (DGS) SBR Program. The Buying MEEC Member shall assess the potential for an MBE subcontractor participation goal, if applicable, for each SBR TORP per Paragraph 1.11 above.

Throughout the term of the Master Contract, Master Contractors qualifying or disqualifying under State of Maryland SBR guidelines shall notify the Procurement Officer and the MEEC Contract Manager of change in status. Should a Master Contractor become SBR certified after award of a Master Contract, the Master Contractor shall notify the Procurement Officer and the MEEC Contract Manager and provide the Procurement Officer and the MEEC Contract Manager with its DGS-assigned SBR Qualification number. Information regarding the SBR Program and Small Business standards can be obtained from the DGS website at <http://goma.maryland.gov/Pages/sbr-Program.aspx>

## 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 “USM/MEEC or Buying MEEC Member-Owned Materials” means those Materials owned or licensed by USM/MEEC or a Buying MEEC Member and supplied to Contractor by or for USM/MEEC or a Buying MEEC Member in connection with the Services that may be required for the Work and the Deliverables. USM/MEEC or the Buying MEEC Member 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 USM/MEEC or a Buying MEEC Member in connection with the Services, Work and Deliverables.

2.4 “Student-Owned Materials” means any and all Materials supplied to Contractor by USM/MEEC or a Buying MEEC Member’s students (including, but not limited to, biometrics and identifying information) accessing any and all services and products produced by Contractor for USM/MEEC or the Buying MEEC Member under and as contemplated in this Agreement (“Students”).

2.5 “Student Data” means any and all student data supplied to Contractor by USM/MEEC or a Buying MEEC Member (including, but not limited to, personally identifiable information and unique student identifiers) accessing any and all services and products produced by Contractor for USM/MEEC or a Buying MEEC Member 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 as specified in a TORP, TOP, or TOC, or TOC Change Order/Amendment which may include, but not be limited to, hosting, development, installation, training, analysis, design, programming, testing, implementation and consulting.

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 Buying MEEC Member (also reference to as “Buying Member” or “Member” or “MEEC Member” – a member institution of MEEC that is in good standing and eligible to purchase under this Agreement.

2.11 Task Order Request for Proposal (also referenced as “TORP”) – A request for a proposal issued under this Master Agreement to one or more of the awarded Master Contractors by a Buying MEEC Member for specific Information Technology Professional Consulting Services. A TORP may include a scope of work (“Scope”) developed in accordance with this Agreement which sets forth specific services required to be provided by the Contractor to the Buying MEEC Member under a Task Order Contract.

2.12 Task Order Proposal (or “TOP”) – A Contractor’s response to a Buying MEEC Member’s Task Order Request for Proposal.

2.13 Task Order Contract (or “TOC”) – An agreement entered into subsequent to the signing of the Master Agreement between a Buying MEEC Member and the Contractor that is specific to the services to be provided by the Contractor to the Buying MEEC Member. Such TOC may also contain specific mandatory terms and conditions applicable to the specific TORP SOW and/or to the Buying MEEC Member’s institutional requirements, including but not limited to how modifications to the TOC or Purchase Order will be handled. Some Buying MEEC Members may issue a Purchase Order as a Task Order Contract.

2.14 Statement of Work (SOW) – developed between Contractor and Buying MEEC Member that details the Services including, but not limited to, the approach and methodologies for delivery and provisions of the Services under a TOC. The SOW is often a work in progress intended to be finalized after the execution of the TOC. The SOW may be incorporated by reference or amendment into a TOC.

2.15 Day or day – Calendar day unless otherwise specified.

2.16 Deliverable – is a tangible, verifiable work output such as a specification, programming, code, modification or other output developed under a TOC by Contractor for delivery to a Buying MEEC Member. A Deliverable shall not include customization or enhancement of the Contractor-Owned Materials requested by the Buying MEEC Member that are not intended to be owned by the Buying MEEC Member as specifically set out in a TOP or TOC.

2.17 Contractor’s Account Representative(s): Person (or persons) that Buying MEEC Members will directly contact for IT Professional Consulting Services needs and utilization of this Master Agreement.

2.18 Contractor’s Executive Manager: Person who is the sole point of contact to the MEEC Executive Director for administrative and contractual communications.

2.19 Procurement Officer: As used in this Agreement, the Procurement Officer for the Master Agreement; each individual Buying MEEC Member may designate its own procurement officer under a specific TOC.

2.20 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 Buying MEEC Members that may contain preprinted PO Terms and Conditions. The preprinted Terms and Conditions will not supersede the terms and conditions in the Master 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 “Term”) shall commence on the date of execution of this Agreement by the University and continue through June 30, 2025 unless otherwise extended or terminated as provided in this Agreement or as a matter of law.

At three (3) year intervals following the award of the Master Contracts, USM/MEEC intends to announce an Expansion Window during which new Offerors may propose to become Master Contractors. Further, during an announced Expansion Window, USM/MEEC intends to allow existing Master Contractors to propose to add functional areas to their Master Contract. Expansion Windows will continue through Year 6 of the Master Contract. Procedures regarding the Expansion Window process will be established by USM/MEEC as deemed in its best interests.

3.2 USM/MEEC and/or its Buying MEEC Members, at their sole discretion, may also elect to conduct trial programs and/or proof of concepts under this Agreement (“Pilot Program”). Following the trial program and/or proof of concept, the USM/MEEC and/or its Buying MEEC Members may, but are not required to, elect to fully deploy the applicable IT system with the Contractor in a manner that serves its best interests. If, after conducting a trial or proof of concept, USM/MEEC and/or its Buying MEEC Members elect to continue with the full deployment of the applicable IT system, negotiations between USM/MEEC and/or its Buying MEEC Members and the Contractor regarding the requirements of the full deployment including all applicable royalties, fees, work plan, and appropriate timeline will occur. USM/MEEC or the Buying MEEC Members make no guarantee that such negotiations will occur. There may be fees related to the Pilot Program which will be negotiated and memorialized in writing between Contractor and Buying MEEC Member on a case by case basis.

3.3 Termination by Notice: In addition to the termination rights as set out in Section 12 of this Agreement, USM/MEEC reserves the right to cancel or discontinue, with thirty (30) days notice to the Contractor, the Master Agreement (or, the Buying MEEC Member reserves the right to cancel or discontinue any Task Order Contract, SOW, or PO done under the Master Agreement) at any time during the Term of the Master Agreement and/or Task Order Contract, SOW, or PO, whichever is applicable, without penalty if deemed in its best interest. As well, USM/MEEC or the Buying MEEC Members may elect, at its sole discretion, to procure the services in another manner as this Master Agreement is non-exclusive. If /the USM/MEEC elects to discontinue the Master Contract or a Buying MEEC Member elects to discontinue a Task Order Contract, SOW, or PO, a summation of work in progress will be made by the Contractor, subject to approval by the USM/MEEC or the Buying MEEC Member, whichever is applicable, and a mutual agreement as to how to finalize this work in progress will be made.

3.4 Any Task Order Contract that commences during the term or terms of the Master Agreement may be completed under the terms and conditions of this Agreement even if the Agreement has been terminated under this Section 4.3 and/or expired and the terms of this Agreement shall remain in full force and effect for the applicable Task Order Contract(s).

### 4. PAYMENT TERMS

4.1 Payment will be made in accordance with the terms and conditions set forth in this Agreement or in accordance with a Task Order Contract/SOW/PO purchased under this Agreement. Contractor’s fees for hosting and professional services shall not exceed the rates set forth in the Master Agreement per the Contractor’s Price Proposal dated \_\_\_\_\_ as may have been subsequently clarified and amended, as attached herein as Exhibit \_\_\_\_\_. The Buying MEEC Member’s organization will be responsible for the processing of all payments to the Contractor.

## 4.2 Invoicing

4.2.1. Payment requests (invoices) shall be submitted electronically to the Buying MEEC Member and must be in U.S. Dollars 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 Buying MEEC Member's TOC or 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 Buying MEEC Member'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, are prohibited.

4.2.3 Detailed, itemized invoices may be required by the Buying MEEC Member. Such details may include, but are not limited to, details regarding the hours worked by Contractor's assigned personnel and by project task or phase.

4.2.4 For time and material TOC/SOW/PO's, the Buying MEEC Member 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. Unless stated otherwise in a TOC/SOW/PO, the Buying MEEC Member will not reimburse for travel expenses or any other applicable business expenses.

4.2.5 The Buying MEEC Member shall not be obligated to pay invoiced amounts that it disputes in good faith, provided that the Buying MEEC Member notifies Contractor in writing of such dispute within ten (10) days of the Buying MEEC Member'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.

4.2.6 The Buying MEEC Member's approval of periodic payments to the Contractor shall not constitute, in any sense, approval or acceptance by the Buying MEEC Member 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.

4.2.7 When required by the Buying MEEC Member to substantiate the degree of completion or hours worked claimed in any application for periodic payments, the Contractor shall furnish USM/MEEC 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 USM/MEEC or the Buying MEEC

Member. If USM/MEEC or the Buying MEEC Member is exempt from any such taxes or fees, then such taxes or fees shall not be charged to USM/MEEC or the Buying MEEC Member upon Contractor's receipt of a copy of USM/MEEC's or the Buying MEEC Member'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. USM/MEEC or Buying MEEC Member owns and retains all right, title and interest in USM/MEEC's Owned Materials. USM/MEEC Students own and retain all right, title and interest in USM/MEEC Student-Owned Material. USM/MEEC 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. USM/MEEC also acknowledges and agrees that in entering into this Agreement, USM/MEEC or the Buying MEEC Member acquires no ownership rights in Contractor-Owned Materials. USM/MEEC or Buying MEEC Member 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 USM/MEEC or Buying MEEC Member-owned Materials or the Student-Owned Materials; or anything that is provided to Contractor by USM/MEEC or the Buying MEEC Member, including but not limited to business processes, software and related documentation. Any modifications or enhancements to the USM/MEEC or Buying MEEC Member Owned Materials or the Student-Owned Materials including those suggested or implemented by Contractor, shall belong to USM/MEEC or the Buying MEEC Member. Contractor agrees that its rights to use any such materials or data provided by USM/MEEC or the Buying MEEC Member, including all USM/MEEC or Buying MEEC Member-owned Materials is limited to such use as is necessary to permit Contractor to perform Services and obligations in this Agreement.

5.2 USM/MEEC or the Buying MEEC Member 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 USM/MEEC or the Buying MEEC Member 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 USM/MEEC or the Buying MEEC Member, no language acknowledging the legal rights of any third party shall appear on materials without the prior written consent of USM/MEEC or the Buying MEEC Member.

5.3 Notwithstanding anything in the Agreement to the contrary, any and all Deliverables shall be the sole and exclusive property of USM/MEEC or the Buying MEEC Member. 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 USM/MEEC's or Buying MEEC Member's request or upon the expiration or termination of this Agreement, Contractor shall deliver, destroy or return all copies of the Work to USM/MEEC or the Buying MEEC Member, as USM/MEEC or Buying MEEC Member 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 USM/MEEC 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 USM/MEEC, the Buying MEEC Member, 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 USM/MEEC or the Buying MEEC Member may deem necessary to secure for USM/MEEC or the Buying MEEC Member 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 USM/MEEC, the Buying MEEC Member, 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 USM/MEEC and/or Buying MEEC Member.

5.9 USM/MEEC and the Buying MEEC Member recognize 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. USM/MEEC's and the Buying MEEC Member'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 USM/MEEC or the Buying MEEC Member, 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 USM/MEEC and the Buying MEEC Member will own the Know-how developed by USM/MEEC and/or the Buying MEEC Member. 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 USM/MEEC and Buying MEEC Member.

5.10 In the event of loss of any data or records necessary for the performance of this Agreement, or any TOC, SOW, or PO, 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 USM/MEEC's or the Buying MEEC Member's Confidential Information (as defined herein). For purposes of this Agreement, "Confidential Information" means all information provided by USM/MEEC, the Buying MEEC Member, or USM/MEEC Students to Contractor, including without limitation information concerning the USM/MEEC's, or the Buying MEEC Member'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 USM/MEEC and its Buying Members 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 Health Insurance Portability and Accountability Act ("HIPAA"), 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 USM/MEEC'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. Furthermore, the Contractor acknowledges that it may be in receipt of health information rendered confidential under the HIPAA and affirms that it will maintain, use, share, and destroy that information in compliance with HIPAA.

6.5 Contractor may disclose Confidential Information as required by law. If Contractor is required by law to disclose Confidential Information, Contractor shall immediately notify USM/MEEC, and before disclosing such information shall allow USM/MEEC 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 USM/MEEC and/or the Buying MEEC Member 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:

Executive Director  
Maryland Education Enterprise Consortium  
1450 South Rolling Road, Room 2.018  
Baltimore, MD 21227

AND

To the Buying MEEC Member's Legal Office or designee

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 USM/MEEC and/or the Buying MEEC Member 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, USM/MEEC and Buying MEEC Member - Owned Materials and USM/MEEC's and Buying MEEC Member'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 USM/MEEC's and Buying MEEC Member's Owned Materials and USM/MEEC's and Buying MEEC Member'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 USM/MEEC or the Buying MEEC Member, Contractor shall return to USM/MEEC or the Buying MEEC Member, all USM/MEEC-Owned Materials, Buying MEEC Member Owned Material, or USM/MEEC's or Buying MEEC Member's Confidential Information, all data, software provided to Contractor by USM/MEEC, Buying MEEC Member,

student records, and any other proprietary information or materials that have not already been purged pursuant to this Agreement; alternatively and at USM/MEEC's or the Buying MEEC Member's option, Contractor shall destroy any or all of the aforementioned beyond recoverability in compliance with the National Institute of Standards and Technology (NIST). 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 USM/MEEC or the Buying MEEC Member.

6.12 USM/MEEC and its Buying MEEC members 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 USM/MEEC and the Buying MEEC Member for its own information and materials identified as confidential under this Agreement. Unless otherwise provided by separate agreement, upon termination of this Agreement, USM/MEEC and the Buying MEEC Member shall return to Contractor all Contractor-Owned Materials, including software, Source Code, and/or documentation provided to USM/MEEC or the Buying MEEC Member by Contractor; alternatively and at Contractor's option, USM/MEEC and/or the Buying MEEC Member shall destroy any or all of the aforementioned beyond recoverability. USM/MEEC or the Buying MEEC Member 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 or the Buying MEEC Member 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 USM/MEEC's or the Buying MEEC Member's Proprietary and Confidential Information and Property could result in irreparable injury to USM/MEEC and/or the Buying MEEC Member 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, USM/MEEC and/or the Buying MEEC Member 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 USM/MEEC and/or the Buying MEEC Member by law.

6.15 Except as specifically permitted by this Agreement, USM/MEEC and the Buying MEEC Member, 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 USM/MEEC and/or the Buying MEEC Member, 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 USM/MEEC and/or the Buying MEEC Member.



## 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 Contractor's knowledge USM/MEEC's or the Buying MEEC Member'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 any software which USM/MEEC and/or the Buying MEEC Member 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 Unless stated differently in a TOC, SOW, or PO issued by a Buying MEEC Member, Contractor shall endorse USM/MEEC's requirement to adhere to the University System of Maryland's (USM) IT Security Standards (<http://www.usmd.edu/usm/adminfinance/itcc/ITSecResource.html>). USM/MEEC and the Buying MEEC Members are 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 USM/MEEC's and/or the Buying MEEC Member'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 USM/MEEC or the Buying MEEC Member's data to the appropriate designee of the USM/MEEC and/or the Buying MEEC Member within one hour of discovery or detection. Contractor will notify the Buying MEEC Member within 12 hours of any confirmed or suspected computer security or operational incidents not resulting in breach of the Buying MEEC Member's 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.

G.7 If Contractor hosts any of USM/MEEC's or a Buying MEEC Member's data, on an annual basis, Contractor shall obtain Service Organization Control (SOC) 1, 2 or 3 reports, and/or a Statement on Standards for Attestation Engagements (SSAE) No. 16 report (the "Reports") for all facilities from which the Services are provided, and, if requested, provide such Reports to the USM/MEEC and/or the Buying MEEC Member. It is the Contractor's responsibility that such Reports are provided under the terms and conditions of this Contract without the University or the Buying MEEC Member being required to agree to additional terms and conditions that may be applied by a third party. If a Report states that a facility has failed to materially satisfy one or more control objectives, Contractor will, as USM/MEEC's or the Buying MEEC Member's sole remedy, use commercially reasonable efforts to cause the facility to materially satisfy all control objectives. If, despite Contractor's efforts, the facility cannot materially satisfy all relevant control objectives, Contractor will mitigate the issue in a commercially reasonable manner which may include the migration to an alternate facility which materially satisfies all control objectives. Failure to do so may be considered a material breach of this Agreement or a Task Order/SOW/Purchase Order in the sole and reasonable discretion of USM/MEEC or the Buying MEEC Member, whichever is applicable.

G.8 USM/MEEC, the Buying MEEC Member, or an appointed audit firm (Auditors) has the right to audit Contractor and its sub-vendors or affiliates that provide a service for the processing, transport or storage of USM/MEEC's or a Buying MEEC Member's data. Audits will be at USM/MEEC's or the Buying MEEC Member's sole expense which includes operational charges by Contractor, except where the audit reveals material noncompliance with contract specifications, in which case the cost, inclusive of operational charges by Contractor, will be borne by the Contractor. In lieu of USM/MEEC or Buying MEEC Member or their appointed audit firm performing their own audit, if Contractor has an external audit firm that performs a review, USM/MEEC or the Buying MEEC Member has the right to review the controls tested as well as the results, and has the right to request additional controls to be added to the certified report for testing the controls that have an impact on its data.

## 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 \$2,000,000.

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

The Buying MEEC Member may require the above insurance coverage limits be increased as needed on a specific task order, SOW, or PO.

8.2 All policies for liability protection, bodily injury or property damage and fiduciary bonding must specifically name on its face USM/MEEC and its eligible MEEC Members as an additional insured with respect to operations under this Agreement, including but not limited to Contractor's data center or other premises where USM/MEEC's and/or a Buying MEEC Member'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 USM/MEEC and the Buying MEEC Member and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees, or guests of USM/MEEC and the Buying MEEC Member.

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 USM/MEEC, the Buying MEEC Members, their 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 USM/MEEC and/or the Buying MEEC Member: (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 USM/MEEC or the Buying MEEC Member settle any such claim without Contractor's prior written approval.

9.2 Contractor will indemnify and hold harmless USM/MEEC, Buying MEEC Members, their 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 USM/MEEC and/or the Buying MEEC Member 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 USM/MEEC and/or the Buying MEEC Member alleging that Contractor software infringes any U.S. patent, copyright, trademark, or other proprietary right, and shall pay any final judgment against USM/MEEC and/or the Buying MEEC Member, including all court awarded costs, damages and expenses, which result from any such claim, provided that USM/MEEC and/or the Buying MEEC Member: (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 USM/MEEC's or the Buying MEEC Member'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 USM/MEEC's and/or the Buying MEEC Member's 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

USM/MEEC and/or the Buying MEEC Member the fees paid for the particular software or Services out of which the claim arose.

9.4 USM/MEEC and its Buying MEEC Members 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 - Not applicable to this Agreement

## 11. LIMITATION OF LIABILITY

NEITHER USM/MEEC NOR THE BUYING MEEC MEMBER AGREEMENT NOR THE CONTRACTOR 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 USM/MEEC AND BUYING MEEC MEMBERS UNDER THIS AGREEMENT DURING THE TERM OF THIS AGREEMENT OR \$1,000,000, 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, USM/MEEC 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 USM/MEEC's option, become the USM/MEEC's property. USM/MEEC 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 USM/MEEC can affirmatively collect damages. The Buying MEEC Member may also terminate for default any Task Order/SOW/PO done under this Agreement in accordance with this Section 12.1. 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 USM/MEEC, in accordance with this clause in whole, or from time to time in part, whenever the USM/MEEC shall determine that such termination is in the best interest of USM/MEEC. USM/MEEC 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. The Buying MEEC Member may also terminate for convenience any Task Order/SOW/PO done under this Agreement in accordance with this Section 12.2. 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-Visual Access

Where applicable, the following will apply to TORPs:

By submitting a TO Proposal, the Master Contractor warrants that the information technology offered under the TO Proposal (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Master Contractor further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access will not increase the cost of the information technology by more than five percent. For purposes of this Master Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Non-visual Access Clause noted in COMAR 21.05.08.05 and referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations.

15. 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.

16. MISCELLANEOUS TERMS

16.1 Publicity/Use of Name and Logo

A. Contractor is authorized to identify USM/MEEC as a party to this Agreement for the purpose of identifying USM/MEEC as a customer to potential customers. However, any other use of USM/MEEC's or a Buying MEEC Member'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 USM/MEEC or the applicable Buying MEEC Member.

B. This Agreement does not include a trademark license. Except as allowed by law for limited informational purposes, USM/MEEC or any of its Buying MEEC Members grants no rights to use any of its trademarks or service marks, for any purpose, without the prior and explicit written permission of USM/MEEC or the Buying MEEC Member, whichever is applicable. Under no circumstances does USM/MEEC or any of its Buying MEEC Members 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.

C. Any violation of this Section 16.1 will be considered a material breach of this Agreement and grounds for its immediate termination in USM/MEEC's sole discretion. Any violation of this Section 15.1 will be considered a material breach of any Task Order Agreement/SOW/Purchase Order entered into by a Buying MEEC Member and grounds for its immediate termination at the Buying MEEC Member's sole discretion.

## 16.2 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 USM/MEEC:            Executive Director  
Maryland Education Enterprise Consortium  
1450 South Rolling Road, Room 2.018  
Baltimore, MD 21227

If to the Procurement Officer:    University of Maryland University College  
Procurement Office, Suite Admin 4100  
3501 University Blvd. East  
Adelphi, Maryland 20783 USA

If to Contractor:

## 16.3 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 the Agreement with the State or USM/MEEC, or a TOC/SOW/PO with a Buying MEEC Member, 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, or any TOC/SOW/PO, whichever is applicable, for ten (10) days, unless another time duration is mutually agreed, due to a Force Majeure, then USM/MEEC may terminate this Agreement, or the Buying MEEC Member may terminate a TOC/SOW/PO, whichever is applicable. Termination will occur according to Section 12 of this Agreement.

## 16.4 Suspension of Work:

The Procurement Officer for the Agreement, or in the case of a TOC/SOW/PO, the Procurement Officer of the applicable MEEC Member, may 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 USM/MEEC or

the Buying MEEC Member. 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 USM/MEEC or the Buying MEEC Member (as applicable) and the Contractor. If the work is suspended by USM/MEEC, Contractor may be permitted to replace its Key Personnel, permission for which will not be unreasonably withheld, in accordance with Section 1.5 of this Agreement.

#### 16.5 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.

#### 16.6 Dispute Resolution

A. Contractor and USM/MEEC and, for TOC/SOW/PO its Buying Members, 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 USM/MEEC and/or its Buying MEEC Members 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. Unless another Disputes process is outlined by the Buying MEEC Member, 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.

#### 16.7 Retention of Records

Contractor shall retain and maintain all records and documents relating to this Agreement for three years (unless a longer period of time is required by a Buying MEEC Member) after the expiration/termination of the Agreement, and final payment by USM/MEEC Buying MEEC Members for all TOC/SOW/PO's done under the Agreement, and will make them available for inspection and audit by authorized representatives of the USM/MEEC, its Buying MEEC Members, 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.

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

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.

#### 16.9 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.

#### 16.10 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.

#### 16.11 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.

#### 16.12 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.

#### 16.13 Ethics

This Agreement, or any TOC/SOW/PO, is cancelable in the event of a violation of the Maryland Public Ethics Law by Contractor or any USM/MEEC's or Buying MEEC Member's employee in connection with this Agreement.

#### 16.14 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 USM/MEEC'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 USM/MEEC 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, USM/MEEC and/or the Buying MEEC Member shall pay Contractor for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. USM/MEEC and/or the Buying MEEC Member 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.

#### 16.15 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.

#### 16.16 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

#### 16.17 Maryland Law Prevails

The laws of the State of Maryland shall govern the interpretation and enforcement of this Agreement. Following exhaustion of 16.6 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

#### 16.18 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.

#### 16.19 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.

#### 16.20 Remedies

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

#### 16.21 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 or any Task Order Contract without obtaining the prior written approval of the USM/MEEC or Buying MEEC Member, whichever is applicable, nor may Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of USM/MEEC. If requested, subcontractors are to be identified in the Task Order Proposal submitted to the Buying MEEC Member in response to a TORP. Such written approval will be in the form of a modification to this Agreement or included in a Task Order Contract, whichever is applicable. The USM/MEEC or a Buying MEEC Member shall not be responsible for the fulfillment of Contractor's obligations to subcontractors. Any such subcontract shall be subject to any terms and conditions that USM/MEEC and/or the Buying MEEC Member deems necessary to protect its interests. Contractor shall remain responsible for performance of all Services under this Agreement or any Task Order Contract, and shall be subject to liability to USM/MEEC and/or the Buying MEEC Member for acts and omissions of subcontractors.

B. Contractor agrees that all Services provided by Contractor under this Agreement or any Task Order Contract including any amendment(s) to this Agreement or any Task Order Contract 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 6 and 7 of this Agreement as if they were a party hereto. Contractor and USM/MEEC agree that USM/MEEC and the Buying MEEC Member is a third party beneficiary of such

engagement agreements and USM/MEEC and the Buying MEEC Member 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 and/or any Task Order Contract for the acts and omissions of its consultants.

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

#### 16.22 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.

#### 16.23 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.

#### 16.24 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.

#### 16.25 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 USM/MEEC 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 USM/MEEC immediately in the event it suffers a disaster or business interruption. Contractor acknowledges that USM/MEEC, 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, USM/MEEC may pursue all available legal remedies, including injunctive and other damages.

#### 16.26 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 USM/MEEC or a Buying MEEC Member 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 USM/MEEC and/or the Buying MEEC Member. Contractor agrees that USM/MEEC may, by written notice to Contractor, terminate this Agreement if USM/MEEC determines that Contractor has violated this provision. Contractor agrees that the Buying MEEC Member may, by written notice to Contractor, terminate and TOC/SOW/PO if Buying MEEC Member determines that Contractor has violated this provision.

16.27 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.

16.28. Time is of the Essence. For all those sections of this Agreement or any TOC/SOW/PO where a number of days or time frame is required, Contractor acknowledges and agrees that time is of the essence as to the production and delivery of all products and services hereunder. Contractor and the Buying MEEC Member acknowledge, however, that the services under a TOC/SOW/PO may be 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.

#### 16.29 Sex Offender Requirement

Maryland Annotated Code, Criminal Procedure Article, §11-704 requires certain sex offenders to register with the local law enforcement agency. Maryland Annotated Code §11-709 requires local law enforcement to inform school systems when a Registered Sex Offender is residing or working in the area. When the sex offender registers, the local police are required to notify the Superintendent of Schools, and the Superintendent, in turn, is required to send a notice to school principals.

As a Contractor working for a Buying MEEC Member that is a school district or board of education, Contractors are prohibited from employing Registered Sex Offenders to work on projects for school systems if they, as a result, are required to perform delivery, installation, repair, construction or any other kind of services on the property of a Buying MEEC Member school district or board of education. Contractor agrees, in compliance with the Code of Maryland, Criminal Procedure Article §11-722, that it shall not knowingly employ or assign an individual to work at a school if the individual is a registered sex offender. An Contractor who violates this requirement is guilty, under Maryland law, of a misdemeanor and if convicted may be subject to up to five years imprisonment and/or a \$5,000 fine. Furthermore, Contractor may not knowingly assign an employee to work on school property with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving a sexual offense, child sexual abuse and crimes of violence.

Each Contractor working with a Buying MEEC Member school district or board of education shall screen their work-forces to ensure that a Registered Sex Offender does not perform work at a county public school and also ensure that a subcontractor and independent contractor conducts screening of its personnel who may work at a school. The term "work force" is intended to refer to all of the Contractor's direct employees and subcontractors and/or independent contractors it uses to perform the work. Violations of this provision may cause the Buying MEEC Member to take action against the Contractor up to and including termination of the contract.

The Contractor shall submit to Buying MEEC Member school district or board of education a listing of any employees assigned to perform under this agreement and certify that the necessary criminal history records checks have been conducted and that employee complies with the requirements.

17. 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: \_\_\_\_\_

Approved at the Board of Regents on \_\_\_\_\_.

Approved at Board of Public Works on \_\_\_\_\_, Item \_\_\_\_\_.