



University of Maryland University College

Pre-Employment Background Review Services (Rebid)

Solicitation #91386

Issue Date: February 11, 2016

Due Date for Responses: February 25, 2016

Submit responses to:

Michael Howard, Senior Buyer
Goods and Non-Technology Services
michael.howard@umuc.edu
Telephone No.: 301-985-7157
Facsimile No.: 301-985-7151

and

Sharon Barry, Director
Goods and Non-Technology Services
sharon.barry@umuc.edu
Telephone No.: 301-985-7156
Facsimile No.: 301-985-7151

All questions are to be submitted in writing solely to the above-mentioned persons no later than February 17, 2016 at 4:00 PM EST. Responses may be submitted via hard copy, fax, or e-mail. Solicitation documents and details can be found at www.umuc.edu/procurement. It is the prospective proposer's responsibility to monitor that site for updates and amendments.

1. BUSINESS NEED:

1.1 Purpose. University of Maryland University College (“UMUC”) seeks proposals from background pre-employment screening firms to establish a non-exclusive contract for the provision of pre-employment background review services (“the Services”). Vendors shall provide on-call, as-needed pre-employment background review services for specified candidates for possible hire. Selected vendors will be required to follow UMUC’s pre-employment protocol when conducting pre-employment reviews. Historically, UMUC conducts an average of approximately 250 pre-employment background reviews per year.

It is anticipated that multiple contracts will result from this Solicitation. UMUC does not guarantee the number of background reviews requiring services from any vendor awarded a contract. UMUC will not be required to solicit all awarded vendors, either individually or collectively, when the need for services arises.

1.2 UMUC Background. Since 1947, UMUC has focused exclusively on the education and professional development needs of adult students, offering classes at times and locations convenient to students whose busy schedules require that they balance school with full-time jobs and full-time family or community responsibilities. UMUC has earned a worldwide reputation for excellence as a comprehensive virtual university and, through a combination of on-site and on-line learning formats, provides educational opportunities for lifelong learning to students in Maryland, as well as throughout the United States and around the world. UMUC serves its students through undergraduate and graduate degree and certificate programs, noncredit leadership development and customized programs.

For more information about UMUC visit <http://www.umuc.edu/visitors/about/>.

1.3 Term. The initial term of the contracts arising from this Solicitation shall commence on or around **April 1, 2016, through March 31, 2018**. There will be three (3) one (1)-year renewal options at the sole discretion of UMUC. The maximum fee for the contracts shall not exceed **\$100,000.00**. Total fees for any service shall not exceed the maximum fee.

2.0 SCOPE OF WORK:

Services under this Solicitation shall include, but may not be limited to, the following:

2.1 Provide Pre-Employment Background Review(s).

- Criminal conviction record search
- National criminal database search
- Employment verification
- Education verification and/or acquisition of certified transcript(s) from an accredited institution

- As needed, UMUC may require additional pre-employment background review information, i.e. credit check, motor vehicle report (MVR), etc., as applicable to specific positions of hire.

* If required, awarded vendors shall contact the candidate(s) to obtain verification and/or to clarify any discrepancies regarding information provided by the candidate.

2.2 Submit to UMUC and/or to UMUC’s Recruitment Process Outsourcing (RPO) Firm/Vendor an Initial Risk Score(s). Upon completion of each pre-employment background review, the selected pre-employment background review firm/vendor shall submit to UMUC and/or UMUC’s RPO firm/vendor an initial risk score. As requested by UMUC, risk scores may require additional review and analysis.

3. SOLICITATION RESPONSE REQUIREMENTS:

The following documentation must be provided in the response:

3.1 Company and Company Profile.

- A. Provide a brief history of the company with emphasis on the required functions specified in the Scope of Work in Section 2 of this Solicitation.

In addition, Proposers are to include the following information:

1. Number of years of experience in providing pre-employment background review services;
 2. Information regarding your leadership, designated UMUC account manager/executives(s), customer service team, full-time and part-time staff;
 3. Resume for the principal account manager/executive(s); and,
 4. Certificate of Insurance verifying adequate insurance coverage to protect against the risks associated with the performance of Services under this Solicitation. (Additional coverage may be required.)
- B. Provide a minimum of three (3) client references (contact name, company name, email, and telephone number, including extension numbers). If available, higher education references are preferred. UMUC reserves the right to contact references not provided in the proposal.

3.2 Technical Approach.

Proposers are to provide a detailed narrative of how their respective firms will meet the requirements for the proposed services, including their approach as it relates to the Scope of Work as set forth in Section 2 of this Solicitation.

In addition, Proposers should:

- A. Describe your firm's pre-employment background review/reporting request process. If applicable, provide a hyperlink to a demonstration of your firm's software/on-line portal established for authorized UMUC users to request a pre-employment background review/report. Proposers are to include all of the information/documentation your firm requires from UMUC and/or the candidate in order to initiate the required background checks listed in Section 2 of this Solicitation.
- B. Describe your firm's verification process. Proposers are to describe in detail the process your firm follows to verify the candidate's information.
- C. Describe the process your firm utilizes to determine risk scores, particularly the weight attributed to respective risk factors. Proposers are to include all of the information/documentation your firm requires from UMUC and/or the candidate in order for your firm to determine a risk score.
- D. Explain how your firm will submit pre-employment background reviews/reports to UMUC. If applicable, provide a hyperlink to a demonstration of your firm's software/on-line portal for authorized UMUC users to retrieve completed pre-employment background reviews/reports.
- E. Provide your firm's review/reporting turnaround from the time a request is submitted until it is completed.
- F. Provide a sample background review report.
- G. Indicate whether or not your firm accepts credit card payments.
- H. Provide the days and hours services are available.
- I. Describe how your firm will provide website/online portal training to UMUC users.

3.3 Financial Condition.

Proposers are to provide information regarding their respective firm's financial history which demonstrates your firm's financial health. Typically, this information is provided through financial statements. The financial statements submitted are not required to be audited.

Proposals must include or respond to the following:

- A. The most recent two (2) years of financial statements.
- B. Has your company, as it currently stands, experienced any financial difficulties, such as bankruptcy, financial restructuring, default on loans, or decrease in bond rating or stock price? If any of the above has occurred, please explain in detail.
- C. What is your current equity/debt ratio?
- D. What are your current debt ratings/recent downgrades?
- E. What is the nature of any recent new or proposed financing?

3.4 Software and Security.

UMUC requires a high level of assurance for confidentiality, integrity, and system availability. In addition, UMUC anticipates migrating to Workday®, a cloud-based finance and HR enterprise software, in the near future. **In consideration of UMUC's anticipated software migration from PeopleSoft® to Workday®, awarded vendor's software must be able to integrate with Workday® in order to process and transmit UMUC's pre-employment background requests and reviews.**

If applicable, vendors are to explain in detail their ability to provide and maintain the following:

- Workday® enterprise software interfacing to transmit pre-employment background information;
- Safe on-line payment processing;
- Industry standard technical and organizational measures to protect against accidental damage to, or destruction, loss, or alteration of the materials;
- Industry standard technical and organizational measures to protect against unauthorized access to the Services, materials and personally identifying information related to users and candidates; and,
- Network and internet security procedures, protocols, security gateways and firewalls with respect to the Services.

3.5 Pricing.

Proposers are to include in their proposal all fees associated with the services listed in Section 2 by completing the "Pricing Sheet" on page 9 of this Solicitation.

The quoted rates and fees must be valid for the initial term of the contract and will remain in effect throughout the renewal terms of the contract, unless the Contractor submits a request in writing to the UMUC Procurement Office sixty (60) days prior to the end of each term. UMUC will have sole discretion to approve or deny rate increase requests. Rate increases above 3% will not be considered.

4. SOLICITATION SCHEDULE:

Solicitation Issue Date:	February 11, 2016
Questions Submission Due Date:	February 17, 2016 at 4:00 PM EST
Proposal Due Date and Time:	February 25, 2016 at 4:00 PM EST
Anticipated Award Date:	March 10, 2016
Anticipated Contract Start Date:	April 1, 2016

5. TERMINATION FOR CONVENIENCE:

UMUC reserves the right to terminate this Solicitation, in whole or in part, at its convenience.

6. PROJECT MANAGEMENT:

The UMUC Office of Human Resources will be providing the management services for this contract.

7. SUBMISSION AND EVALUATION OF THE RESPONSES:

Proposals are to be provided to the Issuing Office in accordance with the Solicitation Schedule. Proposals that are submitted electronically must be attached to an e-mail in portable document format (.pdf). Hyperlinks to software products sent to UMUC's Issuing Office that indicate that the Proposal is posted by the Proposer on an electronic site may be rejected or considered non-responsive if contract terms and conditions (i.e., a Click-Through Agreement) are required to be accepted by UMUC in order to download the Proposal. By providing the Proposal to UMUC electronically, the Proposer grants the University the unlimited right to generate additional electronic and/or paper copies for distribution solely for the purpose of evaluation and review.

Responses are to be provided by the due date noted above. Responses are to be submitted electronically to:

Michael Howard, Senior Buyer
Goods and Non-Technology Services
michael.howard@umuc.edu
Telephone No.: 301-985-7157
Facsimile No.: 301-985-7151

and

Sharon Barry, Director
Goods and Non-Technology Services
sharon.barry@umuc.edu
Telephone No.: 301-985-7156
Facsimile No.: 301-985-7151

Responses must be submitted by an individual of the company who can bind the Firm to all contents of the response.

Responses will be evaluated for technical merit (how well the proposed services meet the needs of UMUC) as well as price. The technical aspects of the response will weigh greater than the price (i.e., a vendor's response evaluated to be more technically responsive even though it has a higher associated price, may be awarded the contract). The decision as to the "most advantageous" is solely at UMUC's discretion. Multiple awards may result from this procurement.

8. SHORTLISTING:

A shortlist may be developed based on the initial evaluation results. All Offerors will be notified of the results as they pertain to their respective proposal. The decision for progressing in the procurement process will be made based on the strengths, weaknesses, advantages, and deficiencies the Proposals present.

Further information, including the completion of an IT security questionnaire, may be requested by UMUC during the evaluation process.

UMUC reserves the right to reject, in whole or in part, any and all proposals without liability and/or to accept any bid in the best interest of the State of Maryland.

9. RESULTING CONTRACT, NON-DISCLOSURE AGREEMENT AND WORK PRODUCT:

A UMUC non-exclusive contract will be issued to the awarded vendors. By responding to this Solicitation, proposers are accepting that they will agree to execute the attached Agreement including mandatory Terms and Conditions for contract award. As part of the attached Agreement, the awarded vendors shall be entering into a Non-Disclosure Agreement with UMUC for confidentiality and protection of UMUC's intellectual property. (Refer to Sections 6

and 7 of the Agreement). All work product and documentation shall be regarded as a work for hire and is the property of University of Maryland University College and may not be copied or reproduced without its expressed written permission.

10. OTHER AGENCY USE:

Other institutions within the University System of Maryland may utilize this contract with the written permission of UMUC. If such use is requested, all terms and conditions including pricing of the contract is to be provided to the requesting institution. If, based on such use by other institutions, the overall volume of the contract increases significantly, UMUC reserves the right to negotiate more favorable pricing for the contract. The service to UMUC must not diminish as a result of other institutions utilizing the contract.

Enclosures:

Solicitation Terms and Conditions
UMUC Professional Services Contract, Inclusive

Pre-Employment Background Review Services

Pricing Sheet: **Solicitation #91386**

Due Date: February 25, 2016, on or before 4:00 PM EST

Firm/Contractor: _____

Responses must include **all** pricing/fees associated with providing the proposed services. All provided pricing must be flat rates and fixed fees, per applicant/candidate and per service.

Pricing must include, but is not limited to, the following primary services:

1. Criminal conviction record search;
2. National criminal database search;
3. Employment verification;
4. Education verification and/or acquisition of certified transcript(s) from an accredited institution; and,
5. User training.

Additional pricing services and sheets may be attached, if necessary.

(Signatures should be placed on following page.)

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

A. INDIVIDUAL PRINCIPAL

In Presence of Witness: _____

VENDOR NAME _____
ADDRESS _____
TELEPHONE NO. _____
SIGNED _____
PRINTED NAME _____
TITLE: _____

B. CO-PARTNERSHIP PRINCIPAL

In Presence of Witness:

(Name of Co - Partnership)
ADDRESS _____

_____ as to

TELEPHONE NO. _____

Printed Name: _____

BY _____
(Partner)

Printed Name: _____

_____ as to

BY _____
(Partner)

C. CORPORATION

Attest:

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

(Name of Corporation)
ADDRESS _____

TELEPHONE NO. _____

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

BY: _____

Signature of Officer and Title

Printed Name

DO NOT COMPLETE – THIS IS A SAMPLE ONLY.

THIS CONTRACT #91386 (“Contract” or “Agreement”) is made this 1st day of April, 2016, between the University of Maryland University College, a constituent institution of the University System of Maryland (“USM”), an agency of the State of Maryland, with offices at 3501 University Boulevard East, Adelphi, Maryland 20783, hereinafter referred to as (“UMUC” or “the University”) and _____ hereinafter referred to as “Contractor” or “Vendor” with principal offices located at _____ (collectively, “the Parties”).

RECITALS

The University issued solicitation documents (Solicitation #91386) on February 11, 2016, as amended from time to time (“the Solicitation”), for pre-employment background review services. Contractor submitted technical and price proposals dated February __, 2016, and accepted by the University (collectively, “the Proposal”) in response to the Solicitation, and the University subsequently selected the Contractor as an awardee of this non-exclusive Contract.

THE PARTIES AGREE AS FOLLOWS:

1. SCOPE, CONTRACT DOCUMENTS, AND TERM

- 1.1 Contractor shall provide professional pre-employment background review services (“the Services”), as needed by UMUC’s Office of Human Resources, in accordance with the terms and conditions of this Contract.
- 1.2 This Contract consists of multiple documents as follows in order of precedence:
 - This Contract Form (pages 1 through _); and any Amendments;
 - The Solicitation #91386 and all amendments to the Solicitation;
 - Exhibit A: Contractor’s Proposal dated February __, 2016;
 - Attachment A: Contract Affidavit; and,
 - Statements of work, if any, issued from time to time, pursuant to this Contract (each of which is incorporated in this Contract whether or not physically attached hereto).
- 1.3 The initial term of this Contract shall commence on or around **April 1, 2016, and conclude March 31, 2018**. There will be three (3) one (1)-year renewal options at the sole discretion of UMUC.

2. PROFESSIONAL SERVICES

- 2.1 The Contractor shall perform the Services as described in Exhibit A to this Agreement. Services shall be performed in accordance with the schedule included in Exhibit A, or, if no such schedule is included, in accordance with a schedule agreed upon in writing by the

Parties at a future date and adopted as an amendment to Exhibit A. The Contractor shall perform the Services as expeditiously as is consistent with good professional skill and care and the orderly progress of the Contract.

- 2.2 The UMUC Office of Human Resources will designate a staff member to act as coordinator (“Project Coordinator”) between UMUC and the Contractor. Throughout the period of the Contract, copies of all correspondence, work products, specifications, estimates and other materials prepared by the Contractor should be directed to the Project Coordinator and also to any other UMUC personnel designated by the Project Coordinator. Direct contact or communication by the Contractor with other UMUC offices or any other entity concerning the Project shall be made only with the prior knowledge and concurrence of the Project Coordinator.
- 2.3 The account manager/executive for the Contract shall be the same firm identified in the Contractor's submittal responding to UMUC's solicitation unless (a) a change is requested by the Contractor and approved in writing by the Project Coordinator; or (b) a change is requested in writing by the Project Coordinator for good cause, in which case the Contractor shall make an appropriate substitution, subject to UMUC's approval, and notify UMUC in writing. Major changes in the Contractor's organization or personnel (other than the Contractor's Team) shall be reported to UMUC in writing as they occur.
- 2.4 All terms and conditions of UMUC's solicitation, and any amendments thereto, are made a part of this Agreement unless expressly contradicted by a term or condition of this Agreement. Proposals or suggestions of the Contractor for changes in the solicitation or the terms and conditions of the contract are not binding upon UMUC and are not a part of this Agreement unless set forth in an amendment of the solicitation or in this Agreement and agreed to in writing by UMUC.

3. FEES AND PAYMENT

- 3.1 The aggregate maximum fee for all Contracts resulting from Solicitation #91386 cannot exceed **\$100,000.00**. The total fees for services required to complete required services shall not exceed the maximum fee.
- 3.2 The Contractor's fees shall not exceed fees set forth in the Contract per the Contractor's proposal, attached hereto as Exhibit A of this contract. The number of pre-employment background reviews under this Contract is not guaranteed.
- 3.3 As compensation for satisfactory performance of Services, the University will pay Contractor no later than thirty (30) days after the University's receipt of a proper invoice from Contractor. Charges for late payment of invoices will be only as prescribed by Title 15, Subtitle 1 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended.

Payment requests (invoices) shall be submitted electronically to the Accounts Payable Department, University of Maryland University College, 3501 University Boulevard East, Adelphi, MD 20783-8002 at accountspayable@umuc.edu.

Contractor may also send the invoices to the UMUC Office of Human Resources. The University's current Purchase Order number, issued for accounting purposes only, must be noted on all invoices.

- 3.4 All fees are exclusive of applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts, value-added and other taxes, tax-like charges and tax-related surcharges. The University is generally exempt from such taxes, and Contractor agrees not to charge the University for such taxes in accordance with applicable law. The University will provide exemption certificates upon request.
- 3.5 Electronic funds may be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

4. WORK PRODUCT

- 4.1 Contractor shall complete all tasks required by the University and other tasks and duties set forth in the request(s) for Services.
- 4.2 Contractor and UMUC intend this Contract to be a contract for services and each considers the Work to be a work made for hire. If, for any reason, the Work would not be considered a work made for hire under applicable law, Contractor does hereby sell, assign and transfer to UMUC, its successors, and assigns, the entire right, title and interest in and to the copyright and any registrations and copyright applications relating thereto and renewals and extensions thereof, and in and to all works based upon, derived from or incorporating the Work, 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.
- 4.3 Contractor agrees to execute all tasks and to perform such other proper acts as UMUC may deem necessary to secure for UMUC the rights in the Work.

5. EVALUATION AND ACCEPTANCE PROCEDURE

- 5.1 Upon completion and delivery of service by Contractor, UMUC will begin the evaluation and acceptance process, which shall include, but not be limited to, the steps described below. Payments, in accordance with Section 3 of this Contract will be based on the completion of requests by Contractor and acceptance by UMUC of each review/report.

- 5.2 Within the time period specified in the Contract including any Contract Amendments, or work order(s) UMUC shall determine whether Contractor's services materially conforms to the specifications defined in the Contract and/or work order(s). As used herein, the term "materially conforms" means that the Service is ready to be used and meets or exceeds UMUC's specifications. If the Service materially conforms to the specifications, then, UMUC will provide confirmation to Contractor that the Service is accepted.
- 5.3 If the Service does not materially conform, UMUC shall immediately inform the Contractor of the deficiencies. Contractor, at no additional cost to UMUC, shall thereafter make all appropriate and necessary fixes to the Service within the time period specified by UMUC. If the Service again fails to materially conform, then, this same process will be repeated one more time. If the Service fails to materially conform to the specifications after delivery for the second time, then, UMUC may, at its sole discretion, (a) further extend the timeframe for cure, (b) cancel the work order and c) begin the termination process as defined in Section 11.1 of this Contract. If UMUC does not elect to terminate this Contract after the second failure, it has not automatically waived its right to do so following any additional failed attempt at correction by Contractor to which the Parties may agree.
- 5.4 If the Contractor fails to meet the Service required at any other periods of time as mutually agreed to, UMUC may declare the Contract in material breach and begin the termination process as defined in Section 11.1 of this Contract.

6. INTELLECTUAL PROPERTY

- 6.1 Neither Party may use the other Party's name, trademarks or other proprietary identifying symbols without the prior written approval of the other Party.
- 6.2 Contractor agrees to defend upon request and indemnify and hold harmless UMUC, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, software, supplies, equipment or services under this Contract.

7. CONFIDENTIAL INFORMATION

- 7.1 Contractor acknowledges and understands that in connection with this Contract, the performance of the Services and otherwise, Contractor has had or shall have access to, has obtained or shall obtain, or has been or shall be given UMUC's Confidential Information (as defined herein). For purposes of this Contract, "Confidential Information" means all information provided by the University to Contractor including, without limitation, information concerning the University's business strategies, political and legislative affairs, students, employees, vendors, contractors, student records, customer lists, finances, properties, methods of operation, computer and telecommunications systems, and software and documentation. 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.

- 7.2 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.
- 7.3 Contractor shall not, in any manner whatsoever, disclose to, permit access to, or allow use of Confidential Information by any person or entity except as specifically permitted or required under this Contract.
- 7.4 Contractor acknowledges and understands that UMUC is required to protect certain Confidential Information from disclosure under applicable law including, but not limited to, the Family Educational Rights and Privacy Act (“FERPA”), the Gramm Leach Bliley Act (“GLBA”), or the Maryland Public Information Act (“PIA”) including regulations promulgated thereunder, as the laws and regulations may be amended from time to time (collectively, “the Privacy Laws”). The Confidential Information that is protected under FERPA was provided to the Contractor as it is handling an institution service or function that would ordinarily be performed by UMUC’s employees. The Contractor agrees that it shall be obligated to protect the Confidential Information in its possession or control in accordance with the Privacy Laws to the same extent as UMUC would be obligated if the Confidential Information was in the possession or control of UMUC. The Contractor further agrees that it is subject to the requirements governing the use and re-disclosure of personally identifiable information from education records as provided in FERPA.
- 7.5 Contractor may disclose Confidential Information as required by legal process. If Contractor is required by legal process to disclose Confidential Information, Contractor shall immediately notify the University, and before disclosing such information shall allow UMUC reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.
- 7.6 Contractor’s obligations with respect to Confidential Information shall survive the expiration or the termination of this Contract.
- 7.7 Contractor acknowledges that Contractor’s failure to comply fully with the restrictions placed upon use, disclosure and access to Confidential Information may cause the University grievous irreparable harm and injury. Therefore, any failure to comply with the requirements of this Article 7 shall be a material breach of this Contract.
- 7.8 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:

Office of Legal Affairs
University of Maryland University College
3501 University Boulevard East
Adelphi, MD 20783

- 7.9 Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that (a) is or becomes generally known to the public, other than as a result of disclosure by Contractor, (b) had been previously possessed by Contractor without restriction against disclosure at the time of receipt by Contractor, (c) was independently developed by Contractor without violation of this Contract, or (d) Contractor and UMUC agree in writing to disclose. Contractor 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 Confidential Information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement.
- 7.10 All Confidential Information received by Contractor shall be returned to UMUC or destroyed upon completion or termination of this Contract.
- 7.11 Only UMUC's Office of Human Resources or UMUC's designee may initiate a Pre-Employment Background Review and receive results. Results of all Pre-employment Background Reviews will be kept confidential and will not be disclosed to any person except to the extent necessary to administer and enforce these procedures, or as required by law or appropriate legal process.

8. SOFTWARE AND SECURITY

- 8.1 Contractor shall endorse UMUC's requirement to adhere to the University System of Maryland ("USM's") IT Security Standards (<http://www.usmd.edu/usm/adminfinance/itcc/ITSecResource.html>). UMUC is required to assess risks, ensure data integrity, and determine the level of accessibility that must be maintained. Specific activities include:
- Identification of security, privacy, legal, and other organizational requirements for recovery of institutional resources such as data, software, hardware, configurations, and licenses at the termination of the contract.
 - Assessment of the contractor's security and privacy controls.
 - Inclusion of UMUC's security and privacy requirements in the agreement.
 - Periodic reassessment of contractor services provisioned to ensure all contract obligations are being met and to manage and mitigate risk.

- 8.2 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.
- 8.3 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.
- 8.4 Report any confirmed or suspected breach of University data to UMUC's Computer Incident Response Team ("CIRT") within one (1) hour of discovery or detection. Any confirmed or suspected computer security incidents not resulting in breach of University data shall be reported to UMUC CIRT within 12 hours of discovery or detection.
- 8.5 Follow strong identity management characteristics and practices, requiring users to adhere to organizational usage, construction, and change requirements.
- 8.6 Configure and maintain network to be suitably hardened against security threats and ensure adequate performance.
- 8.7 On an annual basis, Contractor shall obtain Service Organization Control (SOC) 2 report ("the Report") for all facilities from which the Services are provided. It is the Contractor's responsibility that such Report are provided under the terms and conditions of this Contract without the University being required to agree to additional terms and conditions that may be applied by a third-party. If the Report states that a facility has failed to materially satisfy one or more control objectives, Contractor will, as UMUC'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 in the sole and reasonable discretion of UMUC.
- 8.8 UMUC 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 UMUC data. Audits will be at UMUC'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 UMUC or its appointed audit firm performing their own audit, if Contractor has an external audit firm that performs a review, UMUC 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.

- 8.9 UMUC shall have sixty (60) days after the expiration or termination date of this agreement to retrieve and download data and content. The Contractor shall make available to UMUC a complete and secure (i.e., encrypted and appropriately authenticated) download file of customer data, sales, and product information in .xml format including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Contractor further warrants that all data and content pertaining to UMUC's buying programs is solely owned by UMUC and shall not be transferred or disclosed to any Parties without the written consent from UMUC.

9. RELATIONSHIP OF THE PARTIES

- 9.1 Nothing in this Contract shall be construed to establish a relationship of servant, employee, partnership, association, or joint venture between the Parties. Neither Party shall bind or attempt to bind the other to any contract, warranty, covenant or undertaking of any nature whatsoever unless previously specifically authorized in writing in each instance.
- 9.2 It is understood and agreed that Contractor is an independent contractor of the University, and not an employee. Except as set forth in this Contract, UMUC will not withhold income taxes, social security or any other sums from the payments made to Contractor hereunder. All employees or contractors of Contractor shall in no way be considered employees of UMUC, but rather they shall be employees or contractors of Contractor, and Contractor shall bear full responsibility for compensating those persons and for the performance of the Services by way of them.
- 9.3 Each Party reserves the right to review all press releases or other public communications of the other Party that may affect the Party's public image, programs or operations.
- 9.4 This Agreement is non-exclusive. UMUC reserves the right to arrange for the Services provided hereunder from any other Party.

10. DISTRIBUTION OF RISK

- 10.1 Contractor shall maintain in full force and effect adequate insurance coverage to protect against the risks associated with the performance of Services under this Contract. Contractor shall also maintain in full force and effect workers' compensation insurance as required by the laws of the jurisdiction where the Services are performed. Upon request, Contractor shall provide the University with evidence of such insurance.
- 10.2 Contractor shall indemnify and hold harmless UMUC and the State of Maryland, their officers, employees, and agents, from any and all costs (including, without limitation,

reasonable attorneys' costs and cost of suit), liabilities, claims, or demands arising out of or related to Contractor's performance under this Contract. UMUC agrees to notify Contractor promptly of any known liabilities, claims, or demands against UMUC for which Contractor is responsible hereunder, and Contractor agrees to, at UMUC's request, defend UMUC or settle any such liabilities, claims, or demands.

- 10.3 Neither Party shall be liable to the other for indirect, consequential, incidental, punitive, exemplary, nor special damages, or losses including, without limitation, lost profits and opportunity costs.

11. GENERAL TERMS AND CONDITIONS

- 11.1 Termination for Default. If the Contractor fails to fulfill its obligation under this Contract properly and on time, or otherwise violates any provision of the Contract, UMUC may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. UMUC will provide Contractor a reasonable opportunity, not to exceed 10 business days, to cure the act or omission, provided such opportunity to cure does not extend the deadline for any deliverables and does not cause the University further damage. All finished or unfinished work provided by the Contractor, to which UMUC is entitled pursuant to this Contract shall become the University's property. UMUC shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and UMUC can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the Parties, shall be governed by the provisions of USM Procurement Policies and Procedures.
- 11.2 Termination for Convenience. The performance of work under this Contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the Parties, shall be governed by the provisions of the USM Procurement Policies and Procedures.
- 11.3 Delays and Extension of Time. The 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 Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the 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 a contract with the State or UMUC, changes in law or regulation, action by government or other competent authority, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, malicious or criminal acts of third parties, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

11.4 Suspension of Work. The Procurement Officer unilaterally may order the 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 University.

11.5 Subcontracting and Assignment.

11.5.1 The Contractor may not subcontract any portion of the Services provided under this Contract without obtaining the prior written approval of UMUC nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of UMUC. UMUC shall not be responsible for the fulfillment of the Contractor's obligations to subcontractors. Any such subcontract shall be subject to the terms and conditions that UMUC deems necessary to protect its interests. Contractor shall remain responsible for performance of all Services under this Contract, and shall be subject to liability to the University for acts and omissions of subcontractors.

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

11.6. Maryland Law Prevails. The laws of the State of Maryland shall govern the interpretation and enforcement of this Contract.

11.7 Contract Integration and Modification. This Contract 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 Contract may be amended with the written consent of both Parties. Amendments may not significantly change the scope of the Contract.

11.8 No Third-Party Beneficiaries. This Agreement is only for the benefit of the undersigned Parties and their permitted successors and assigns. No one shall be deemed to be a third-party beneficiary of this Agreement.

11.9 Notices. Notices under this Contract will be written and will be considered effective upon personal delivery 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:

For the University:

University of Maryland University College
Procurement Department
Attn: Procurement Officer
3501 University Boulevard East
Adelphi, MD 20783-8044

For the Contractor:

- 11.10 Disputes. This Contract shall be subject to the USM Procurement Policies and Procedures. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.
- 11.11 Retention of Records. Contractor shall retain and maintain all records and documents relating to this Contract for five (5) years after final payment by the State and will make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times and at no cost to UMUC. These documents may include, but are not limited to, correspondence, the original signed consent form, background search results, W2s, paystubs, employment verification documents, and official transcripts.
- 11.12 Non-Hiring of Employees. No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the Party or Parties hereby contracting with the State of Maryland or any unit thereof.
- 11.13 Non-Discrimination in Employment. The 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.

- 11.14 Contingent Fee Prohibition. The 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 the Contractor, to solicit or secure this Contract, 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 Contract.
- 11.15 Financial Disclosure. The 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.
- 11.16 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.
- 11.17 Anti-Bribery. The 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.
- 11.18 Ethics. This Contract is cancelable in the event of a violation of the Maryland Public Ethics Law by the Contractor or any UMUC employee in connection with this procurement.
- 11.19 Compliance with Laws. The Contractor hereby represents and warrants that:
- 11.19.1 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;
- 11.19.2 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 Contract;
- 11.19.3 It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

11.19.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

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

11.21 Multi-Year Contracts Contingent Upon Appropriations. 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 Contract succeeding the first fiscal period, this Contract 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 University's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the University from future performance of the Contract, but not from their rights and obligations existing at the time of termination.

The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred, but not amortized in the price of the Contract. The University shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

11.22 Pre-Existing Regulations. 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 Contract are applicable to this Contract.

11.23 Insurance.

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

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 \$2,000,000 products/completed operations aggregate; and

Not less than \$2,000,000 general aggregate.

Workers' compensation per statutory requirements.

Fiduciary Bonding of Workers with access to cash and/or credit card information.

11.23.2 The Contractor shall provide to the Procurement Officer a certificate of insurance including evidence of the required limits at the execution hereof, and annually thereafter. All insurance certificates provided to the University for general and/or excess liability protection, bodily injury or property damage and fiduciary Bonding must specifically name on its face the University as an additional insured as respects to operations under the contract and premises occupied by the Contractor provided, however, with respect to the 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 the University and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University.

11.23.3 Notices of policy changes 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.

IN WITNESS WHEREOF, the Parties, by their authorized representatives have executed this Contract.

UNIVERSITY OF MARYLAND
UNIVERSITY COLLEGE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

This **Exhibit A** to **THIS CONTRACT** #91386 is made this 1st day of _____, 2016, between the University of Maryland University College, a constituent institution of the University System of Maryland ("USM"), an agency of the State of Maryland, with offices at 3501 University Boulevard East, Adelphi, Maryland 20783, hereinafter referred to as ("UMUC" or "the University") and _____ hereinafter referred to as "Contractor" or "Vendor" with principal offices located at _____ (collectively, "the Parties").

Statement of Work:

Exhibit A:

See Contractor's Proposal dated February __, 2016.

ATTACHMENT A

CONTRACT AFFIDAVIT

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

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name: _____

Address: _____

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

C. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

D. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____ By: _____