



REQUEST FOR PROPOSAL FOR

HEDIS SOFTWARE

RFP NO: BC-21130-M

ISSUED: 02/13/2019

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

UNIVERSITY OF MARYLAND BALTIMORE COUNTY
1000 Hilltop Circle, Administration Building 7th Floor
Baltimore, Maryland 21250
procurement.umbc.edu

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Issue Date:	February 13, 2019
Pre-Proposal Conference:	None to be held
Last Day for Questions:	March 4, 2019
Technical Proposal due date:	March 13, 2019 by 11:59 pm Eastern Time

(to be submitted electronically to: Technic.ocfufj3k9z4glg9s@u.box.com)

Interview/Technical Demonstrations:	April 25, 2019
Anticipated Price Proposal Due Date:	May 8, 2019
Contractor Selection anticipated to be finalized:	May 16, 2019
Contract Commencement:	June 1, 2019 (Projected)

SECTION I

SCOPE OF SERVICES/SOLUTION REQUIREMENTS

1. Overview

The University of Maryland, Baltimore County (UMBC) is soliciting competitive proposals from qualified firms to provide software to allow the Hilltop Institute to calculate Healthcare Effectiveness Data Information Set (HEDIS) measures using administrative data sources.

2. Background

Established in 1966, the University of Maryland, Baltimore County (UMBC) is one of twelve institutions that along with two regional centers constitute the University System of Maryland. UMBC combines the emphasis on teaching found at the best liberal arts colleges with the innovation of a research university. UMBC's students take full advantage of the educational, business, cultural, and recreational resources of Baltimore and Washington, D.C. At UMBC, students work alongside faculty who are leaders in their fields; think about the hard questions of society, science, and creative expression; and then move beyond the classroom to make a difference.

UMBC is increasingly recognized as a major resource for building the State's economy and addressing its social concerns. More than 70% of UMBC's 53,600 active alumni live and work in Maryland, contributing significantly to the State's economic and social vitality. In Fall 2017, UMBC had 13,662 enrolled students of which 50% were minority enrollments from nearly all 50 states and more than 80 nations, creating a richly diverse student body. UMBC's research expenditures totaled \$78.5M for fiscal year 2017. UMBC is ranked among the Top 20 U.S. universities in NASA funding and is classified by the Carnegie Foundation as a Doctoral University – Higher Research Activity.

The Hilltop Institute is a non-partisan health research center at UMBC dedicated to advancing the health and wellbeing of people and communities. Hilltop has expertise in Medicaid and improving publicly financed health care systems and conducts research, analysis, and evaluations on behalf of government agencies, foundations, and nonprofit organizations at the national, regional, and local levels. Since its inception in 1994, Hilltop has maintained a nationally recognized partnership with the Maryland Department of Health (MDH) to analyze state health policies and develop solutions for the Maryland Medicaid program.

Hilltop specializes in working with Medicaid data and maintains a secure, Health Insurance Portability and Accountability Act (HIPAA)-compliant data repository containing Maryland Medicaid and Medicare administrative data, hospital discharge data, commercial health plan data, nursing home assessment data (the federal Minimum Data Set), and assessment data for individuals receiving long-term services and supports. Under its Master Agreement with MDH, renewed every five years, Hilltop is responsible for calculating HEDIS and HEDIS-like measures for the Maryland Medicaid program. Hilltop does not currently use a commercial HEDIS software product for these calculations, but has instead performed this work through in-house coding using SAS programming. HEDIS-like measures allow for the modification of a HEDIS measure to accommodate state-specific performance measures (e.g., adding a Current Procedural Terminology code to an existing HEDIS measure). Approximately 85 percent of Maryland Medicaid enrollees are enrolled in mandatory managed care, HealthChoice, and currently

there are nine (9) managed care organizations (MCOs) participating in the HealthChoice program. There are approximately 1.4 million Maryland Medicaid full and partial benefit enrollees in both managed care and fee-for-service (FFS).

3. REQUIREMENTS FOR THE SOFTWARE

The HEDIS software shall be available for up to 10 users to calculate HEDIS and HEDIS-like measures for the entire Maryland Medicaid population, as well as by individual Medicaid MCO, and allow for flexibility to measure for certain selected sub-populations of enrollees. The software shall be provided by a firm that is a National Committee for Quality Assurance (NCQA) certified software vendor. The firm shall also provide technical assistance for software installation, training, and software customization. The firm shall maintain NCQA HEDIS certified status throughout the contract period. Additionally, as directed by the U.S. Department of Health and Human Services, any vendor that is offering a cloud-based solution must comply with the Security and Privacy Rules, as well as Breach Notification Rules of the Health Insurance Portability and Accountability Act. The cloud environment shall possess controls and implemented procedures as specified by cybersecurity industry standards and best practices; e.g., the NIST Cyber Security Framework and NIST Special Publication 800-66.

It is expected that the software shall provide the ability to perform trend analysis through the inclusion of measures for multiple years (up to 5 years). The trend analysis may use the same HEDIS specifications applied across all years, or apply each specific year's HEDIS specifications. The software shall also provide a person-level dataset with indicators showing whether each participant met or did not meet the denominator or enrollment criteria. For example, if a measure requires a participant to be enrolled in a health plan for (i) at least 320 days, (ii) enrolled as of December 31, with (iii) no more than one gap of 45 days or more, the dataset would show whether each participant met or did not meet each individual criteria within the measure. The software shall also include indicators showing whether each participant met or did not meet the numerator or clinical criteria. For example, if a measure requires a participant to have a follow up after an emergency department (ED) visit within (i) 7 days, and (ii) 30 days, the dataset should show whether each participant had or did not have a follow up visit within the 7-day and 30-day time periods. The University requires the ability to identify whether individuals meet or do not meet the denominator and numerator criteria for the HEDIS measures as this information is necessary in the resolution of any disputes over the results raised by organizations to which HEDIS scores are applied.

The software shall also provide the ability to modify certain HEDIS measures to fit populations or criteria that are not in complete agreement with HEDIS standards. For example, requiring continuous 365 day enrollment rather than gaps, or changing age groupings, etc. It shall be able to report errors indicating problems found such as, incorrectly formatted dates. Finally, the software shall generate logs indicating the number of observations read into the software, the date and time the program was run, the location and names of input and output files, user/initiator of the program, etc.

All data shall be secured and protected through the implementation of the appropriate level of security measures throughout the system and environment to protect all confidential information and sensitive data. The Solution shall comply with Secure Socket Layer (SSL) protocol, minimum of TLS 1.0 (Transport Layer Security) for transmitting data across the internet. Additionally it should support

Federal Information Processing Standards (FIPS 140-2) for IT Encryption. All data must be stored and processed within the United States. Results of security audits shall be provided to UMBC upon request, and necessary security elements shall be implemented to reduce the risk of a data breach.

4. IMPLEMENTATION AND ONGOING SUPPORT

The selected firm shall furnish all of the necessary services, qualified personnel, material, equipment, and facilities as needed to perform the requirements of this Scope of Work. The Hilltop Institute will assist the selected firm by facilitating access to information and documentation on Hilltop's Medicaid data warehouse and technology infrastructure and will assist with scheduling meetings with key Hilltop resources.

Project Management

Within five (5) days of award, the selected firm will schedule a kick-off meeting with The Hilltop Institute at UMBC to discuss project goals and the work plan. As requested, the firm will schedule telephonic meetings every two (2) weeks with The Hilltop Institute to discuss project progress and address any issues that may have arisen. For all meetings, the selected firm will provide an agenda for the meetings at least 24 hours in advance of the meetings and submit meeting notes to Hilltop within 48 hours after the conclusion of the meetings.

HEDIS Software License

The software must have the ability to calculate HEDIS and HEDIS-like measures for the Medicaid managed care and FFS populations. For HEDIS-like measures, the software must have the ability to be modified to accommodate state-specific performance measures and populations, with minimal programming effort. The software must allow for measurement for the most recent five (5) years.

Delivery and Installation of HEDIS Software

The selected firm will deliver the HEDIS software to Hilltop securely, through Software as a Service (SaaS) Secure File Transfer Protocol (SFTP) or other agreed upon secure method of transfer. An on-premise solution that can be installed at UMBC or a cloud based solution managed by UMBC that has as its infrastructure SAS and Structured Query Language (SQL) databases is preferred.

The selected firm will provide Hilltop with infrastructure and operating system requirements for the software and provide technical assistance as needed to install and integrate the HEDIS software into the Hilltop network. The installation of the software shall be completed as promptly as feasible following award. After software installation is complete, the firm shall provide an overview and instructions for Hilltop staff on the HEDIS software and be available for ongoing consultation and real-time technical support services by telephone or online during regular business hours.

The firm shall provide patches to the HEDIS software as necessary to address errors or NCQA-required updates, and provide the latest updated versions of the HEDIS software to Hilltop within 30 days of availability.

At the end of the contract, should a different firm assume a new contract, the firm shall provide services necessary to assure a smooth transition of business needs.

SECTION II

GENERAL INFORMATION/INSTRUCTIONS TO PROPOSERS

This RFP document has been posted on Procurement Services website: <https://procurement.umbc.edu/bid-board/> for your convenience. Addenda and attachments will be posted if issued. It is the firm's responsibility to ensure that the website is reviewed prior to submission of a proposal to ensure that all information for this RFP has been received. The University encourages you to check the site frequently for any changes prior to the due date.

1. Issuing Office and Contact for Questions/Inquiries

University of Maryland, Baltimore County
1000 Hilltop Road
Administration Building – 7th Floor
Baltimore, MD 21250

Attn: Elizabeth Moss
Executive Director of Procurement & Strategic Sourcing
E-mail: emoss@umbc.edu

The Issuing Office shall be the **sole** point of contact with the University for purposes of the preparation and submittal of proposals in response to this solicitation. Any failure to adhere to this requirement may result in the rejection of any firm's proposal or cancellation of this RFP.

All questions and inquiries regarding this procurement are to be sent by email to the Executive Director of Procurement and Strategic Sourcing. All questions and inquiries must be received by the dates established for each phase of the procurement as stated in the Solicitation Schedule. Questions will receive a written reply. Copies of replies will be sent to all other Offerors, but without identification of the inquirer.

2. Addenda Acknowledgment

Offerors responding to this RFP must acknowledge the receipt of any, and all, addenda, amendments, and changes issued. Receipt of the addenda, amendments, and changes issued must be acknowledged in writing by Offerors on the Acknowledgement of Addenda Form.

3. Proposal Due Date and Time

All proposals must be received at the Issuing Office by the due date and time stated in the Procurement Schedule. The University may, at its sole discretion, accept late proposals if it is determined to be in the best interest of the University. **Technical Proposals are to be submitted electronically to the Box address listed on the solicitation schedule.** To ensure that the Box link works, you should cut and paste the hyperlink rather than type it. Proposers should receive an automatically generated verification from Box when the file has successfully uploaded. Proposers that do not receive verification should immediately contact the Procurement office to confirm that their response has been

received.

LATE PROPOSALS WILL NOT BE ACCEPTED. The time on the uploaded document in Box from the Proposer will be used to determine timeliness. Subsequent submittals shall be due as stated in the Solicitation Schedule.

4. Interviews/Demonstrations

Offerors may be required to interview or provide a demonstration to University representatives. The Procurement Office will provide notice of the time and place for the interviews at the time of scheduling. However, it is anticipated that the interviews will be scheduled on the date listed in the procurement schedule. Offerors are advised to set aside that date in its entirety on their calendar.

The University reserves the right to conduct discussions with all qualified or potentially qualified offerors, in any matter necessary to serve its best interests. The University also reserves the right to award a contract based on written proposals received without discussions or negotiations.

5. Minority Business Enterprises

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

6. Contract

The Contract to be entered into as a result of this RFP (the "Contract" or "Agreement") shall be by and between the proposer as Vendor/Contractor and UMBC in the form of an University Contract and shall contain the mandatory provisions included herein in Appendix B as well as any additional terms required by UMBC or the State of Maryland. By submitting an Offer, the Vendor/Contractor warrants that they have reviewed Appendix B and will execute a contract a) in substantially the same form and b) with these mandatory terms and conditions upon request by UMBC. The awarded Contractors should not assume that any term and condition of the Contract is negotiable.

Additionally, based on the determination by UMBC that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the selected firm shall execute a Business Associate Agreement (BAA) as required by HIPAA regulations at 45 C.F.R. §164.501. A sample BAA has been included in Appendix B. This Agreement must be executed at the same time as the contract.

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

7. Term of Contract

Any contract arising from this RFP action shall commence on the date the contract is executed on behalf of UMBC, or such other date as UMBC and the Contractor shall agree. The term of the contract ("Initial Term") will be for a period of two (2) years. Following the Initial Term of the contract, at the sole discretion of UMBC, there will be an option to renew for four (4) additional one (1) year terms.

In addition, UMBC at its sole option may discontinue the solution, in whole or in part at any time during the Initial Term or Renewal Terms with 60 days notice with no further obligations to the Contractor and with no penalty.

Upon termination of the contract, either at the end of the term or earlier, the Contractor shall take all reasonable and prudent measures to facilitate transition to the University or a successive provider, to the extent required by UMBC. The Contractor shall not be paid the final invoice until the completion of the successful invoice.

8. Acceptance of offer

The Technical Proposal, any supplemental information that may be received from the Proposer during the procurement, and Price Proposal is considered by UMBC to be an Offer from the Proposer. By submitting an Offer, in response to this RFP, a Proposer/Offeror shall be deemed to have substantially accepted all the terms, conditions, and requirements set forth in this RFP. The RFP including all addenda in total shall be incorporated into the contract by reference.

9. Confidentiality of Proposer's Information.

Any trade secrets or proprietary information submitted with a proposal for which the firm seeks protection from public disclosure must be clearly identified by the specific page and section number in the proposal and accompanied by a suitable justification requesting non-disclosure.

10. Intergovernmental Cooperative Purchasing.

The University reserves the right to extend the terms, conditions, and prices of the contract awarded pursuant to this solicitation to other institutions of the University System of Maryland, and to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities. This is conditioned upon mutual agreement of all parties. Each such entity will issue its own purchasing documents. UMBC assumes no authority, liability, or obligation on behalf of any other entity that may use any contract resulting from this solicitation.

SECTION III PROPOSAL REQUIREMENTS

TECHNICAL PROPOSAL

The Technical Proposal should be prepared in a clear and concise manner. The purpose of this technical proposal is to provide a complete overview of the firm's qualifications and ability of the solution to meet the University's requirements, and display full comprehension of the products and services to be provided, as well as **how** such services will be provided to the University. Additionally, proposers must include the appropriate completed forms as indicated below. Failure to provide any of the information requested or include any of the items listed may result in the Initial Technical Proposal being found non-responsive or impact the evaluation of your firm's Initial Technical Proposal response. ***For ease of use by UMBC, Proposers are asked to paginate the Technical Proposal.***

1. Transmittal/Cover Letter that is prepared on the Proposer's business stationery must accompany the proposal. The purpose of this letter is to transmit the proposal; therefore, it should be brief, but shall list all necessary contact information for the proposing firm, including the contact's telephone number and email address. The telephone number for the firm contact shall include any applicable extension numbers. The letter must be signed by an appropriate person of the Proposing Firm.

2. Proposed Solution

A brief explanation of the solution that is being proposed to the University to include information on each of the aspects described in the requirements section. Additionally, the software is not required to include the new HEDIS 2019 Technical Specifications for Long Term Services and Supports (LTSS) Organizations to assess whether Medicaid LTSS are delivering high-quality, person-centered care, however, the firm should indicate whether the software includes or will include this capability.

3. Implementation Plan/Timeline

Provide an implementation plan, including a proposed timeline. Indicate the information that will be required from UMBC, as well as level of effort expected.

4. Key Personnel and Project Management Plan

Provide the names and resumes for the key personnel proposed for the University's contract. At a minimum, the account manager and project manager for implementation shall be identified. Provide a Project Management Plan for the project, including an organizational chart showing the organization and reporting relationships for key project personnel and any subcontractors, as well as a description of project management and control mechanisms. It is expected that the team will include a senior-level project manager that is capable of effectively managing HEDIS software delivery and installation.

5. Support

Provide detailed information about the help desk support, as well as a Problem Escalation Procedure that includes, at a minimum, names, titles, and contact information of individuals to be contacted by The Hilltop Institute's Contract Monitor should problems arise. Explain how problems with the software will be escalated in order to resolve any issues in a timely manner.

Describe the process to provide patches and updated versions of the software. Include information that details the frequency of patches and the communication provided to customers prior to release.

6. Company Profile

Provide a brief history of the firm, including the location and size. Identify the principals and the staffing organization. Indicate the number of individuals involved in providing technical support. Firms must demonstrate that they are actively engaged in providing NCQA HEDIS software and have prior experience in delivery and installation of HEDIS software.

7. Firm Experience/References

Provide at least three (3) comparable projects undertaken by offeror. Identify the similarities and differences between the reference projects and the proposed project. The project examples submitted should reflect similar challenges, technical character, and services provided, and demonstrate experience with installation required to successfully complete this project. Provide contact information for these projects, including the name, telephone number, and email address of the project manager for each. The University reserves the right to verify all information given if it so chooses, as well as, to check any other sources available including itself even if not provided as a reference by the Proposer. Offeror's should ensure that accurate information is provided and that the contact person is capable of speaking to the firm's capability in performing the services required.

8. Subcontractors

List each subcontractor proposed for the University's contract, with a complete description of the subcontractor's role and involvement.

9. Security Documentation

Soc2/Type2, SSAE16, and any other independent security reviews shall be provided.

10. NCQA Certification

Provide a copy of the firm's NCQA certification to provide support services and HEDIS software licenses.

Bid/Proposal Affidavit – Form: State and USM Procurement Regulations require that each proposal submitted by a firm include a signed Proposal Affidavit. A copy of this Proposal Affidavit is included in Appendix A.

Acknowledgement of Receipt of Addenda Form: If any addenda to the solicitation documents are issued prior to the due date and time for the Technical Proposal, this form (found in Appendix A) is to be completed, signed, and included in the Proposing Contractor's Technical Proposal.

PRICE PROPOSAL

Price Proposals are not requested at this time. Refer to the Solicitation Schedule for the anticipated due date and time of Price Proposals. Price Proposals will be requested at the appropriate time via addendum of all applicable shortlisted firms. The Price Proposal Form will be issued with the Price Proposal Request addendum.

SECTION IV EVALUATION PROCEDURE

1. Evaluation Committee

All technical proposals received by the closing deadline will be evaluated by a committee appointed by the Procurement Officer. The committee may request additional technical assistance from any source within the University System of Maryland, state government, or other sources deemed appropriate. Technical and price proposals will be evaluated independently.

2. Qualifying Proposals

Proposals shall be initially reviewed for compliance with the solicitation requirements. Only firms that have obtained, and will maintain, a NCQA certification to provide support services and software license to enable HEDIS reporting during the term of the agreement will be considered.

Failure to comply with solicitation requirements may result in a proposal being classified as not reasonably susceptible of being selected for award. Minor irregularities in proposals that are immaterial or inconsequential in nature may be cured or waived whenever it is determined to be in the University's best interest.

The University may classify a proposal as "not reasonably susceptible of being selected for award" if it is incomplete or does not meet minimum requirements. The University may also determine that an offeror is non-responsible, ie. does not have the capacity all respects to perform the work required. Should a proposal be judged not reasonably susceptible of being selected for award, or an offeror be found not responsible, the proposal will not be considered further; offeror will be notified accordingly.

3. Technical Evaluation

After determining compliance with the RFP's minimum requirements, the evaluation committee will evaluate the technical merit of each proposal in accordance with the criteria below.

At the discretion of the Procurement Officer following recommendation by the evaluation committee, a shortlist of qualified proposals may be established during the technical evaluation. Only shortlisted offerors would continue in the evaluation process; offerors not short-listed shall be so advised.

4. Financial Evaluation

Price proposals will be evaluated separately from Technical Proposals.

5. Discussions – Best and Final Offers

The Procurement Officer may invite one or more qualified offerors for oral presentations of their proposals. Discussions or negotiations may be conducted with qualified offerors. The Procurement Officer reserves the right to make award without discussions or negotiations.

When in the best interest of the University, the Procurement Officer may request that qualified offerors to revise their initial proposals by submitting best and final offers.

6. Evaluation Criteria

Technical and financial merit shall be accorded equal importance.

The technical evaluation criteria are listed below in descending order of importance:

- extent to which the proposal delivers the desired outcomes for HEDIS software, and customer support;
- offeror experience with NCQA Software;
- offeror capacity, management, and personnel; and
- offeror software security measures.

7. Final Ranking and Selection

Following evaluation of the technical and price proposals, the evaluation committee will recommend to the Procurement Officer award to the responsible offeror whose proposal is determined to be the most advantageous to the University.

APPENDICES
FORMS AND ATTACHMENTS

APPENDIX A
INITIAL TECHNICAL PROPOSAL FORMS

Bid/Proposal Affidavit

Acknowledgement of Receipt of Addenda Form

BID/PROPOSAL AFFIDAVIT

A. Authority

I HEREBY AFFIRM THAT:

I (print name) _____ possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test, disability, or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. Certification Regarding Minority Business Enterprises.

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

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

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

B-2. Certification Regarding Veteran-Owned Small Business Enterprises.

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review; or
- (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(14) of this regulation, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

_____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

_____.

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT: Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
 - (a) 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 State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
 - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the bid or proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N. ACKNOWLEDGEMENT

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

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

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

RFP NO.: BC-21130-M

TECHNICAL PROPOSAL DUE DATE: **March 13, 2019 on or before
11:59 pm Eastern Time.**

RFP FOR: HEDIS Cloud Software

NAME OF PROPOSER: _____

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA

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

Addendum No. ____ dated _____

Addendum No. ____ dated _____

Addendum No. ____ dated _____

Addendum No. ____ dated _____

Addendum No. ____ dated _____

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

Signature

Name Printed

Title

Date

APPENDIX B

Contract Forms

Terms and Conditions of the Contract

Cloud Service Provider Agreement

Contract Affidavit

Business Associate Agreement

CONTRACT
BETWEEN
THE UNIVERSITY OF MARYLAND, BALTIMORE COUNTY
AND

By this Contract for Services, made as of the ____ day of _____, 2019, by and between The University of Maryland, Baltimore County, a constituent institution of the University System of Maryland, and instrumentality of the State of Maryland ("UMBC" or "State"), 1000 Hilltop Circle, Baltimore, Maryland 21250, and _____, located at _____ ("Contractor"), the parties hereby agree as follows:

1. **TERM OF CONTRACT:** The term of this Contract shall be from _____ and expiring _____ unless otherwise extended, expired, or terminated pursuant to this Contract or as a matter of law. If applicable, there are _____ 12-month renewal options at UMBC's sole option and discretion.

2. **SCOPE OF CONTRACT:** The Contractor's obligations and duties under this Contract shall include, but are not limited to, the Work, terms, conditions and specifications contained herein, in the attached Exhibit(s), and any amendments or changes (collectively referred to hereinafter as the "Contract Documents"). These obligations and duties are subject to the unilateral right of UMBC to order, in writing, changes in the work within the scope of the Contract.

3. **COMPENSATION, INVOICING AND METHOD OF PAYMENT:**

3.1 As compensation for satisfactory performance of the Services and Work described in Paragraph 2, above, UMBC will pay the Contractor as provided in the attached Exhibit.

3.2 Payment will be made in accordance with the terms and conditions set forth in this Contract. Contractor's fees, including but not limited to software licensing, hosting and professional services, shall not exceed the rates set forth in the Contractor's Proposal as attached herein as an Exhibit.

3.3 Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after UMBC's receipt of a proper invoice from the Contractor. Each such invoice must reflect the Contractor's federal tax identification number, which is _____. Charges for late payment of invoices, other than as prescribed by the Maryland Code, State Finance and Procurement Article, Title 15, Subtitle 1, are prohibited.

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. UMBC is generally exempt from such taxes and Contractor agrees not to charge UMBC for such taxes in accordance with applicable law. UMBC will provide exemption certificates upon request.

4. **RESPONSIBILITY OF CONTRACTOR:**

4.1 The Contractor shall perform the Work with that standard of care, skill and diligence normally provided by a Contractor in the performance of services similar to the Work hereunder.

4.2 Notwithstanding any review, approval, acceptance, or payment for the Services by UMBC, the Contractor shall be responsible for professional and technical accuracy of the Work furnished by the Contractor under this Contract.

4.3 The Contractor shall perform the Work as described in these Contract Documents. Work shall be performed in accordance with the schedule included in these Contract Documents, or, if 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 these Contract Documents. The Contractor shall perform the Work as expeditiously as is consistent with good professional skill and care and the orderly progress of the Work.

5. **SOFTWARE:** Contractor hereby represents and warrants that:

5.1 Contractor shall perform all of the Work in a professional manner in accordance with industry standards for software development and Information Technology related services, and that the software development and related services will conform to the specifications in this Contract.

5.2 Contractor shall endorse and enable UMBC's requirement to adhere to the University System of Maryland's (USM) IT Security Standards (found through), as may be amended from time to time. UMBC 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.
- Periodic reassessment of Contractor Services provisioned to ensure all contract obligations are being met and to manage and mitigate risk.

5.3 Contractor is the owner or authorized user of Contractor Materials, software and all of its components, and, 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.

5.4 Contractor shall establish and maintain, at minimum, industry standard technical and organizational measures to help to protect against (i) accidental damage to, or destruction, loss, or alteration of Materials; (ii) unauthorized access to the Confidential Information; (iii) unauthorized access to the Services and Materials; and (iv) industry known system attacks (e.g., hacker and virus attacks).

5.5 Contractor will report any confirmed or suspected breach of UMBC Materials to UMBC's Chief Information Security Officer within one day of discovery or detection. Any confirmed or suspected computer security incidents not resulting in breach of UMBC Materials shall be reported to UMBC Chief Information Security Officer within five days of discovery or detection.

5.6 Contractor will follow strong identity management characteristics and practices, requiring users to adhere, at a minimum, to UMBC usage, construction, and change requirements.

5.7 Contract will configure and maintain its network to be suitably hardened, at industry standards, against security threats and ensure adequate performance.

5.8 For Contractor's Services that engage UMBC Materials classified by UMBC as Data Sensitivity Level 2 or 3 (<https://goo.gl/CsBDVG> and <http://goo.gl/td8gwk>) Contract shall, on an annual basis, obtain Service Organization Control (SOC) 1, 2 or 3 reports, and/or a Statement on Standards for Attestation Engagements (SSAE) No. 16 report ("Reports") for all facilities from which the Services are provided. It is the Contractor's responsibility that the Reports are provided under the terms and conditions of this Contract without UMBC 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, Contract will use commercially reasonable efforts to cause the facility to materially satisfy all relevant 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 Contract in the sole and reasonable discretion of UMBC.

5.9 UMBC, or a UMBC-appointed audit firm, (Auditors) has the right to audit Contractor's security related to the processing, transport, or storage of UMBC Materials. Audits will be at UMBC'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 UMBC, or its appointed audit firm, performing their own audit, if Contractor has an external audit firm that performs a review, UMBC 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 UMBC Materials.

5.10 Contractor will give UMBC written notice of any government or third-party subpoena requests within five days of Contractor's receipt of the request, and prior to answering the request.

6. **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 UMBC under this Contract. Contractor agrees that its plans include reasonably prudent back-up business resumption and disaster recovery and that it continually maintains its business continuity plans to ensure that they remain current. Contractor further agrees to inform UMBC immediately in the event it suffers a disaster or business interruption. Contractor acknowledges that UMBC, at its option, may regard Contractor's failure to comply with the requirements in this Section as a material breach of this Contract, and that, in such event, UMBC may pursue all available legal remedies, including injunctive and other damages.

7. **OWNERSHIP AND PROPRIETARY RIGHTS**.

7.1 Contractor owns and retains all right, title and interest in Contractor-Owned Materials. If the Contractor furnishes any design, device, material, process, or other item which is covered by a patent or copyright or which is deemed proprietary to or a trade secret of a third party, Contractor shall obtain the necessary permission or license to use such item. UMBC owns and retains all right, title and interest in UMBC-Owned Materials. UMBC Students own and retain all right, title and interest in UMBC Student-Owned Material. UMBC 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. UMBC also acknowledges and agrees that in entering into this Contract, UMBC acquires no ownership rights in Contractor-Owned Materials. UMBC shall not copy, transfer, sell, distribute, assign, or display Contractor-Owned Materials to third parties. Contractor acquires no rights of ownership in or to the UMBC-Owned Materials or the Student-Owned Materials; or anything that is provided to Contractor by UMBC, including but not limited to business processes, software and related documentation. Any modifications or enhancements to the UMBC-Owned Materials or the Student-Owned Materials including those suggested or implemented by Contractor, shall belong to UMBC. Contractor agrees that its rights to use any such materials or data provided by UMBC, including all UMBC-Owned Materials is limited to such use as is necessary to permit Contractor to perform Services and obligations in this Contract.

7.2 Contractor agrees to indemnify and hold harmless, and defend, upon request, UMBC, its officers, agents, Board of Regents and employees with respect to any claim, action, cost, liability, or judgment for infringement of any patent, trademark, copyright, or trade secret arising out of purchase or use of Contractor-Owned Material under this Contract and for a violation or breach of the provisions set forth in this Section 7 and Section 8 of this Contract. If any Materials furnished by Contractor become, or in Contractor's opinion, are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for UMBC the right to continue using the applicable item; (2) replace the Material with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

7.3 Notwithstanding anything in the Contract to the contrary, any and all Deliverables shall be the sole and exclusive property of UMBC. 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.

7.4 Upon UMBC's request or upon the expiration or termination of this Contract, Contractor shall deliver or return all copies of the Work to UMBC.

7.5 Contractor and UMBC intend this Contract to be a contract for services and each considers any tangible work products identified as Deliverables during the Term or Terms of this Contract 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 UMBC, 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 UMBC may deem necessary to secure for UMBC the rights in the Deliverables.

7.6 Other than Deliverables and Contractor-Owned Materials, the tangible property and work products created by Contractor pursuant to this Contract ("Work Product") shall mutually belong to UMBC 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 Contract, all Deliverables shall be owned exclusively by UMBC.

7.7 UMBC recognizes that Contractor's business depends substantially upon the accumulation of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops in its engagements. UMBC'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 UMBC, 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 UMBC will own the Know-how developed by UMBC. 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 UMBC.

8. PROPRIETARY AND CONFIDENTIAL INFORMATION:

8.1 Contractor acknowledges and understands that in connection with this Contract, 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 UMBC's Confidential Information (as defined herein). For purposes of this Contract, "Confidential Information" means all information provided by UMBC or UMBC Students to Contractor, including without limitation information concerning UMBC'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.

8.2 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 Contract.

8.3 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 Contract.

8.4 Contractor acknowledges and understands that UMBC 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 (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 UMBC'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 re-disclosure of personally identifiable information from education records as provided in FERPA. Contractor expressly warrants and represents that it shall not use the student information or educational records provided by UMBC for any purpose other than to comply with the terms of this Contract with UMBC. Contractor shall indemnify and hold harmless UMBC from and against any and all claims, suits, proceedings, costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs, attorney's fees, and other reasonable expenses of litigation, which may arise out of, relate to, or be a consequence of, an unauthorized disclosure of educational records. Contractor will, upon discovery, or receipt of notice, of a potential, or actual, material unauthorized disclosure of educational records, immediately report said occurrence to UMBC. Contractor will work with UMBC to remediate the unauthorized disclosure (or anticipated unauthorized disclosure) at the expense of Contractor. The terms of the remediation are the sole and exclusive determination of UMBC.

8.5 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 UMBC, and before disclosing such information shall allow UMBC reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.

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

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

8.8 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:

Procurement Officer
UMBC
1000 Hilltop Circle
Baltimore, MD 21250

AND

To UMBC's Legal Office or designee
UMBC
1000 Hilltop Circle
Baltimore, MD 21250

8.9 Contractor agrees to use Student-Owned Materials, UMBC-Owned Materials and UMBC's Confidential Information only as necessary to perform its responsibilities under this Contract, keep it confidential in accordance with this Contract and 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).

8.10 Contractor will implement security measures at its offices and all other associated facilities in connection with Contractor software to ensure the strictest confidentiality of UMBC-Owned Materials, UMBC's Confidential Information and all other confidential information and materials. These measures will include, without limitation, encryption, use of a sign-on and access privilege system and other measures described in this Contract, and such other measures as Contractor deems necessary in its professional discretion. Unless otherwise provided by

separate agreement, upon termination of this Contract or upon earlier request by UMBC, Contractor shall return to UMBC, all UMBC-Owned Materials or UMBC's Confidential Information, all data, software provided to Contractor by UMBC, student records, and any other proprietary information or materials that have not already been purged pursuant to this Contract; alternatively and at UMBC's option, Contractor shall destroy any or all of the aforementioned beyond recoverability. Contractor may retain one full version of part or all of the aforementioned data for the sole purposes of demonstrating contractual compliance. Any data referred to in this section that is still within Contractor's actual or constructive control shall be subject to the terms of this Contract in perpetuity. Except as otherwise provided herein, Contractor shall not retain any electronic or other copies of any UMBC Materials or Student-Owned Materials contemplated herein without the prior written authorization from UMBC.

8.11 UMBC 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 UMBC for its own information and materials of a similar nature, identified as confidential under this Contract. Unless otherwise provided by separate agreement, upon termination of this Contract and upon request, UMBC shall return to Contractor all Contractor-Owned Materials, including software, Source Code, and/or documentation provided to UMBC by Contractor; alternatively, and at Contractor's option, UMBC shall destroy any or all of the aforementioned. UMBC 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.

8.12 Contractor will notify UMBC as soon as commercially practical of any actual or suspected breach of security with respect to Confidential Information. Contractor will notify UMBC as soon as commercially practical of any unusual circumstances, 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). Notifications to be made under this Section shall be made in the most expeditious manner possible (telephone with e-mail confirmation is preferred) to the UMBC Chief Information Security Officer.

8.13 Except as specifically permitted by this Contract, Contractor acknowledges that any unauthorized use, reproduction, or disclosure of UMBC's Proprietary and Confidential Information and Property could result in irreparable injury to UMBC 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, UMBC 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 UMBC by law.

8.14 Except as specifically permitted by this Contract, UMBC 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 UMBC, 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 or immunity that may be available to UMBC.

9. **COMPLIANCE WITH FERPA:** UMBC agrees that, for purposes of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) as amended ("FERPA"), the Contractor will be considered a contractor to whom functions and services have been outsourced by UMBC. As a result of these function and services, the Contractor might have access to educational records, as defined by FERPA. Contractor agrees that it shall not re-disclose personally identifiable education records that it receives from or on behalf of UMBC pursuant to this Contract, unless such disclosure is authorized to perform the functions and services provided through this Contract or is authorized under FERPA. Contractor expressly warrants and represents that it shall not use the student information or educational records provided by UMBC for any purpose other than to comply with the terms of this Contract with UMBC. Contractor shall indemnify and hold harmless UMBC from and against any and all claims, suits, proceedings, costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs, attorney's fees, and other reasonable expenses of litigation, which may arise out of, relate to, or be a consequence of, an unauthorized disclosure of educational records. Contractor will, upon discovery, or receipt of notice, of a potential, or actual, material unauthorized disclosure of educational records, immediately report said occurrence to

UMBC. Contractor will work with UMBC to remediate the unauthorized disclosure (or anticipated unauthorized disclosure) at the expense of Contractor. The terms of the remediation are the sole and exclusive determination of UMBC.

10. **SUBCONTRACTING AND ASSIGNMENT:**

10.1 Except as explicitly set forth in this Contract, Contractor may not subcontract any portion of the Services provided under this Contract without obtaining the prior written approval of UMBC, nor may Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of UMBC. Such written approval will be in the form of a modification to this Contract. UMBC 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 UMBC 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 UMBC for acts and omissions of subcontractors.

10.2 Contractor agrees that all Services provided by Contractor under this Contract including any amendment(s) to this 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 7, 8 & 9 of this Contract as if they were a party hereto. Contractor and UMBC agree that UMBC is a third party beneficiary of such engagement agreements and UMBC 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 Contract for the acts and omissions of its consultants.

10.3 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, or via a merger, with notice to UMBC. Contractor may designate a third party to receive payment without UMBC's prior written consent unless in conflict with Maryland or federal law, but shall provide UMBC with notification thereof.

11. **PUBLICITY/USE OF NAME AND LOGO:**

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

11.2 This Contract does not include a trademark license. Except as allowed by law for limited informational purposes, UMBC grants no rights to use any of its trademarks or service marks, for any purpose, without the prior and explicit written permission of UMBC. Under no circumstances does UMBC grant the right to use its logos or marks or any related products or services.

11.3 Any violation of this Section 11 will be considered a material breach of this Contract and grounds for its immediate termination in UMBC's sole discretion.

12. **TIME IS OF THE ESSENCE:** For all those sections of this Contract 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.

13. **DELAYS AND EXTENSIONS 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 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 Contractor, including but not restricted to, acts of God, acts of public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of an agreement with the State or UMBC, 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 Contract for ten (10) days, unless another time duration is mutually agreed, due to a Force Majeure, then UMBC may terminate this Contract. Termination will occur according to Section 17 of this Contract.

14. **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 UMBC. 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 UMBC and the Contractor.

15. **INSURANCE:**

15.1 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 Contractor under this Contract 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
- Worker's Compensation per statutory requirements
- Professional Liability or Technology Errors and Omissions insurance in an amount not less than \$1,000,000

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

15.2 All policies for liability protection, bodily injury, or property damage and fiduciary bonding must specifically name on its face UMBC as an additional named insured with respect to operations under this Contract, including but not limited to Contractor's data center or other premises where UMBC'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 UMBC and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees, or guests of UMBC.

15.3 Contractor will take commercially reasonable and practical steps to ensure that each insurance policy contains endorsements, identical to, or nearly identical to, the following: "It is understood and agreed that the Insurance Company shall notify the Procurement Officer in writing forty-five days (45) in advance of the effective date of any reduction in or cancellation of this policy." Upon the request of the Procurement Officer, a certified true copy of each policy of insurance including the above endorsement manually countersigned by an authorized representative of the insurance company shall be furnished to the Procurement Officer. 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."

16. **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 UMBC's rights or Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both Contractor and UMBC from future performance of the Contract, but not from their rights and obligations existing at the time of termination. Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. UMBC shall notify 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.

17. **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, UMBC may terminate the contract 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 UMBC's option, become UMBC's property. UMBC 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 damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and UMBC 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.

18. **TERMINATION FOR CONVENIENCE:** The Contractor's performance under this Contract may be terminated by UMBC, in accordance with this clause in whole, or from time to time in part, whenever UMBC shall determine that such termination is in the best interest of UMBC. UMBC 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. In the event that UMBC terminates under this provision, UMBC and Contractor agree that Contractor is entitled to retain the balance of the prepaid annual license fee or one year of any prepaid annual license fee, whichever is less, as reasonable costs associated with the termination. 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 USM Procurement Policies and Procedures.

19. **INSOLVENCY:** In addition to and not in conflict with the provisions in Section 17 and Section 18 of this Contract, either party may terminate this Contract 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.

20. **SURVIVAL AFTER EXPIRATION OR TERMINATION:** Notwithstanding the expiration or termination of this Contract 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:

Ownership and Proprietary Rights, Section 7
Proprietary and Confidential Information, Section 8
Indemnification, Section 22
Limitation of Liability, Section 23
Representations and Warranties, Section 42

21. **LIQUIDATED DAMAGES:** Time is an essential element of the Contract and it is important that the work be vigorously prosecuted until completion. For each day that any work shall remain uncompleted beyond the time(s) specified in the Exhibit, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the Exhibit, provided, however, that due account shall be taken of any adjustment of the specified completion time(s) for completion of work as granted by approved change orders.

22. **INDEMNIFICATION:**

22.1 In addition to the obligations to indemnify set forth elsewhere in this Contract, Contractor will indemnify and hold harmless UMBC, its officers, employees, students, contractors, and agents, from and against any and all claims, suits, proceedings, costs, losses, damages, injury, liabilities, expenses, demands, and judgements, including court costs, attorney's fees, and other reasonable expenses of litigation, (collectively, a "Claim") arising directly out of Contractor's operations under this Contract, 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 Contract, and including the disclosure of user personally identifiable data, either during the term of this Contract or at any time thereafter, if such disclosure occurred as a

result of negligence by Contractor, its employees, contractors, or agents, and provided that UMBC: (a) notifies Contractor promptly in writing of any such Claim, (b) reasonably cooperates with Contractor in defending any such Claim, and, (c) in no event shall UMBC settle any such Claim without Contractor's prior written approval. Additionally, the Contractor shall reimburse, indemnify and hold harmless UMBC for all loss to UMBC resulting from the non-performance of this Contract, except those losses otherwise specifically excluded by UMBC.

22.2 Contractor will defend and indemnify UMBC for any Claim brought against UMBC alleging that Contractor-owned Materials infringes any U.S. patent, copyright, trademark, or other proprietary right, and shall pay any Claim against UMBC, including all court awarded costs, damages and expenses, which result from any such Claim, provided that UMBC: (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.

22.3 If UMBC's use of Contractor-owned Materials or Services becomes, or, in Contractor's opinion, is likely to become, enjoined as a result of a claim pursuant to alleged-infringement of any third party's proprietary rights, Contractor, at Contractor's expense, shall either procure UMBC the right to continue using the Contractor-owned Materials or Services, or replace or modify the same so that it becomes non-infringing (provided replacement or modified Contractor-owned Materials or Services have substantially comparable functionality to the original Materials or Service) or, in the event performing the foregoing options are not commercially reasonable, refund to UMBC the fees paid for the particular Materials or Services out of which the claim arose.

22.4 UMBC 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. Contractor agrees that any obligation of UMBC, as agency of the State of Maryland, under this Contract is subject to the limitations of liability that apply to agencies of the State of Maryland and other limitations of liability set forth in this Contract or by law.

23. **LIMITATION OF LIABILITY:** EXCEPT WHERE THE SAME RESULTS FROM CONTRACTOR'S BREACH OF ANY PRIVACY, CONFIDENTIALITY, OR OTHER LAW, CONTRACTOR'S REPRESENTATIONS OR WARRANTIES, CONTRACTOR'S INDEMNIFICATION OBLIGATIONS, OR FOR ANY DAMAGES INCURRED AS A RESULT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR (A) NEITHER UMBC NOR 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 CONTRACT OR IN TORT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) CONTRACTOR'S LIABILITY IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PROVIDED HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY UMBC UNDER THIS CONTRACT DURING THE TERM OF THIS CONTRACT OR \$500,000, WHICHEVER IS GREATER.

24. **DISPUTE RESOLUTION:**

24.1 Contractor and UMBC agree to work in good faith to resolve between them all disputes and claims arising out of or relating to this Contract, the parties' performance under it, or its breach. Contractor and UMBC will each designate an officer or other management employee 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 Contract but shall indicate that the parties are unable to resolve their dispute.

24.2 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:

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

24.2.2 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 Contract terms, or other relief, arising under or relating to this Contract. 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.

24.2.3 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 (30) days of when the basis of the claim was known or should have been known, whichever is earlier.

24.2.4 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.

24.2.5 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.

24.2.6 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 UMBC.

24.2.7 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 thirty (30) days of receipt of the decision.

24.2.8 Pending resolution of a claim, Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

25. **NON-HIRING OF UNIVERSITY EMPLOYEES**: No employee of UMBC, 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 herein contracting with UMBC.

26. **ETHICS**: This Contract is cancelable in the event of a violation of the Maryland Public Ethics Laws by Contractor or any UMBC employee in connection with this Contract.

27. **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.

28. **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 UMBC 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 UMBC. Contractor agrees that UMBC may, by written notice to Contractor, terminate this Contract if UMBC determines that Contractor has violated this provision.

29. **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.

30. **CONFLICT OF INTEREST LAW**: It is unlawful for any University officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he, his spouse, parent, child, brother, or sister, has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, §3-101 et seq of the Annotated Code of

Maryland.

31. **MARYLAND LAW:** The laws of the State of Maryland shall govern the interpretation and enforcement of this Contract. Following exhaustion of the procedures set forth in Section 24 (Dispute Resolution), any subsequent legal actions arising under this Contract will be instituted only in the courts of the State of Maryland. As specifically provided by Maryland Code, Commercial Law Article, Section 21-104, the parties agree that computer software purchases made under this Contract shall not be governed by the Uniform Computer Information Transactions Act (UCITA) as adopted in Maryland under the Maryland Code, Commercial Law Article, Title 21 of the Commercial Law Article, as amended from time to time. This Contract 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.

32. **FORCE MAJEURE:** If either party's performance(s) hereunder is rendered impossible, hazardous or is otherwise prevented or impaired due to sickness, inability to perform, accident, interruption or failure of means of transportation, Act(s) of God, riots, strikes, labor difficulties, epidemics, earthquakes, any act or order of any public authority, and/or any other cause or event, similar or dissimilar, beyond that party's control, then each party's obligations with respect to the affected performance(s) shall be excused and neither party will have any liability in connection therewith.

33. **WAIVER OF JURY:** UNIVERSITY AND CONTRACTOR HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THEY ARE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS CONTRACT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES WHO ARE NOT PARTIES TO THIS CONTRACT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY UNIVERSITY AND CONTRACTOR, WHO HEREBY REPRESENT AND WARRANT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY AN INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

34. **NON-DISCRIMINATION IN EMPLOYMENT:** During the performance of this Contract, the Contractor agrees as follows: (a) The Contractor will not discriminate against any employee, applicant for employment, or individual because of race, color, religion, creed, age, sex, sexual orientation, gender identity or expression, marital status, national origin, veteran's status, genetic information, and/or physical or mental handicap. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, age, sex, sexual orientation, gender identity or expression, marital status, national origin, veteran's status, genetic information, and/or physical or mental handicap; (b) The Contractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must, at minimum, contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined; (c) The Contractor will post in conspicuous places, available to employees, applicants for employment, and representatives of each labor union with which the covered Contractor has a collective bargaining agreement, notices setting forth the provisions of the nondiscrimination clause in subsection (a); (d) In the event of the Contractor's noncompliance with the nondiscrimination clause, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further contracts with the UMBC; and (e) The Contractor will include the provisions of paragraphs (a) through (d) in every subcontract so that such provisions will be binding upon each subcontractor or vendor.

35. **AMERICANS WITH DISABILITY ACT AND ACCESSIBILITY:** Contractor represents and warrants that it complies 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 as amended. Contractor represents and warrants, as applicable, that the Services, Work, and/or Deliverables comply with Web Content Accessibility Guidelines (WCAG) Version 2.0 Level AA, and that it shall provide written documentation verifying accessibility, promptly respond to and resolve accessibility complaints received from UMBC, and indemnify and hold UMBC harmless in the event of claims arising from inaccessibility.

36. **CIVIL RIGHTS ACT 1964:** Vendors and Contractors providing materials, equipment, supplies or services to the State under this Contract herewith assure the State that they are conforming to the Civil Rights Act of 1964,

the Civil Rights Restoration Act of 1988, and the Civil Rights Act of 1991, and Section 202 of Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

37. **AFFIRMATIVE ACTION:** The Contractor and all subcontractors shall develop and maintain affirmative action plans directed at increasing the utilization of women and members of minority groups on State public works projects, pursuant to the Executive Order 11246 of the President of the United States of America and guidelines on Affirmative Action issued by the Equal Employment Opportunities Commission (EEOC) 29 C.F.R. part 1608 and the Governor of Maryland's Executive Order 01.01.1993.16.

38. **RETENTION OF RECORDS:** The Contractor shall retain and maintain all records and documents relating to this Contract for three (3) years after final payment by UMBC, or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of UMBC or the State of Maryland, including the Procurement Officer or designee, at all reasonable times. Upon demand of UMBC, Contractor will deliver a copy of records of use to UMBC. Compliance with this section shall not be deemed a breach of any confidentiality obligations provided for herein.

39. **AUDIT:** UMBC reserves the right to request an independent review of the Contractor's financial operations and overall contract compliance ("Review"). The Review would be at the Contractor's expense and comprised of an agreed upon procedures engagement by an independent certified public accountant with a protocol acceptable to both parties at the time of the request.

40. **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 Contract, neither party will have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

41. **NO THIRD PARTY BENEFICIARIES:** This Contract is only for the benefit of the undersigned parties and their permitted successors and assigns. Except as provided in Section 10 of this Contract, no one shall be deemed to be a third party beneficiary of this Contract.

42. **COMPLIANCE WITH LAWS:** The Contractor hereby represents and warrants that:

42.1 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;

42.2 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;

42.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

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

43. **PRE-EXISTING REGULATIONS:** In accordance with the provisions of Maryland Code, State Finance and Procurement Article, Section 11-206, 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.

44. **FINANCIAL DISCLOSURE:** The Contractor shall comply with the provisions of the Maryland Code, State Finance and Procurement Article, Section 13-221 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.

45. **POLITICAL CONTRIBUTION DISCLOSURE:** The Contractor shall comply with Maryland Code, Election Law Article, Article 33, Sections 14-101 through 14-104, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 to a candidate for elective office in any primary or general election.

46. **SET-OFF:** UMBC may deduct from and set-off any amounts due and payable to the Contractor any back-charges or damages sustained by UMBC by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the Services or any part of the Services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the Services.

47. **PROHIBITION AGAINST SHIFTING MARYLAND INCOME TO OUT-OF-STATE AFFILIATES:** Contractor may not, for any period during the Contract term, seek to reduce the amount of Contractor's income subject to Maryland income tax by payments made to an affiliated entity or an affiliate's agent for the right to use trademarks, trade names, or other tangible property associated with Contractor. Contractor agrees that during the course of this Contract it shall not make any such royalty or similar payments to any affiliated company; and if any such royalty or similar payments are made, Contractor and the affiliated company shall file separate Maryland income tax, under a formula that reasonably apportions the income of the affiliated company among the states, including Maryland, in which the Contractor does business. Contractor agrees that it is authorized to bind its affiliated entities to the terms hereof.

48. **NOTICES:** Except as required by law, notices under this Contract 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 UMBC: Procurement Officer
UMBC
1000 Hilltop Circle
Baltimore, Maryland 2120

If to Contractor:

49. **CONTRACT CONTROLS:** It is mutually agreed that any attached contract, or addenda thereto, by and between UMBC and the Contractor pertaining to this Contract is supplemental and subordinate to this University of Maryland, Baltimore County Contract. The terms and conditions of this University of Maryland, Baltimore County Contract shall, at all times and in all events and situations, be controlling.

50. **ENTIRE AGREEMENT:**

50.1 The parties agree that this Contract, including without limitation any Change Orders, Software Licenses/Professional Services Scope of Work/Subscription Services Agreements (if applicable), and other Attachments, and Exhibits thereto, constitutes the entire, complete and exclusive statement of the agreement between them as to the specific subject matter hereof and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations. 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 University's employees or students, such agreements shall be null, void and without effect, and the terms of this Contract shall apply. This Contract is intended by the parties as the final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement.

50.2 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.

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

50.4 Any provision of this Contract which is found to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, and the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the remaining provisions hereof.

50.5 Except as required by law, 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.

50.6 Counterparts. This Contract may be executed simultaneously, in two (2) or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to any other counterpart.

51. **USE OF CONTRACTOR'S FORMS NOT BINDING ON STATE:**

51.1 The use or execution by UMBC of any forms, orders, agreements, or other documents of any kind, other than the Contract documents, used pursuant to or in the administration of any contract awarded by UMBC to the Contractor, shall not bind UMBC to any of the terms and conditions contained therein except those provisions:

51.1.1 Generally describing for the purposes of ordering: equipment or Services to be provided, locations, quantities, delivery or installation dates, and, to the extent consistent with the Contract Documents, prices; and

51.1.2 not otherwise inconsistent with the Contract Documents.

51.2 Any such form, order, or others document shall not vary, modify, or amend the terms and provisions of the Contract Documents, notwithstanding any provision to the contrary in such document, unless all of the following conditions are met:

- a. the document expressly refers to the particular document and provision of the Contract Documents being modified and plainly and conspicuously identifies any modifications thereto as a modification; and
- b. the document is executed on behalf of UMBC by the procurement officer; and
- c. execution of the document is approved by the procurement authority whose approval is required by law.

52. **CONTRACT AFFIDAVIT:** The Contract Affidavit required by the USM Procurement Policies and Procedures, consisting of Authorized Representative statement, Certification of Corporate Registration and Tax Payment, and Certain Affirmations Valid is attached and is a part of this Contract that must be executed by an authorized representative of the Contractor.

53. **DEFINITIONS:**

53.1 "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 Contract.

53.2 "UMBC Materials" means those Materials owned by UMBC and supplied to Contractor by or for UMBC in connection with the Services that may be required for the Work and the Deliverables. UMBC Materials specifically includes, but is not limited to, Confidential Information, as defined in Section 8, and Materials which would be confidential or proprietary in respect to a private entity.

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

53.4 “Student-Owned Materials” means any and all Materials supplied to Contractor by UMBC students (including, but not limited to, biometrics and identifying information) accessing any and all Services and products produced by Contractor for UMBC under and as contemplated in this Contract.

53.5 “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 Contract.

53.6 “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.

53.7 “Services” means all work necessary to provide the service specified, which may include without limitation online hosting, development, installation, training, analysis, design, programming, testing, implementation, and consulting.

53.8 “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.

53.9 “Work” means any and all products, Deliverables, and/or Services required within a Scope of Work, as well as the documentation, research, notes, data, computations, estimates, reports, or other documents, or work product related thereto including development activities created by or produced by Contractor for UMBC under this Contract. It is agreed that Work shall not include the Licensed Software or modifications thereto or Contractor-Owned Materials.

53.10 “Day” means calendar day, unless otherwise specified.

53.11 “Deliverable” is a tangible, verifiable work output such as a specification, programming, code, modification or other output developed for UMBC. A Deliverable may not include customization or enhancement of the Contractor-Owned Materials requested by UMBC that is not intended to be owned by UMBC.

53.12 “Procurement Officer” is UMBC’s Procurement Officer or designee.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on their behalf by the undersigned as of the date first shown above.

Contractor: _____

Witness

BY: _____
Signature

Typed/Printed Name

Title

Date

University of Maryland Baltimore County

Witness

BY: _____
Signature

Typed/Printed Name

Title

Date

CONTRACT AFFIDAVIT

(This affidavit is a mandatory contract addendum in accordance with
USM Procurement Policies and Procedures.)

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) _____ possess the legal authority to make
this Affidavit.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable items):

- (1) Corporation — ___ domestic or ___ foreign;
- (2) Limited Liability Company — ___ domestic or ___ foreign;
- (3) Partnership — ___ domestic or ___ foreign;
- (4) Statutory Trust — ___ domestic or ___ foreign;
- (5) ___ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the 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.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

(ii) The business's policy of maintaining a drug and alcohol free workplace;

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

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

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), of this regulation;

(h) Notify its employees in the statement required by §E(2)(b), of this regulation, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), of this regulation.

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

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/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: _____ (printed name of Authorized Representative and affiant)

_____ (signature of Authorized Representative and affiant)

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”), effective _____ (“Effective Date”), is entered into by and between _____ (the “Business Associate Subcontractor”) and the University of Maryland, Baltimore County, a constituent institution of the University System of Maryland and an instrumentality of the State of Maryland, acting by and through its department and research component The Hilltop Institute (the “Business Associate”) (Business Associate Subcontractor and Business Associate each a “Party” and collectively the “Parties”).

Business Associate has an arrangement to provide services on behalf of one or more organizations identified as a Covered Entity under 45 CFR §160.103. Business Associate has engaged the services of Business Associate Subcontractor to assist in the completion of Business Associate’s scope of work under the arrangement with such Covered Entity.

The Parties have an agreement dated _____ (the “Agreement”) under which the Business Associate Subcontractor may use and/or disclose Protected Health Information (PHI) as necessary to perform the services set forth in Service Agreement. Both Parties are committed to complying with the Standards for Privacy and Security of Individually Identifiable Health Information (the “Privacy & Security Regulations”) promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and as it is updated, amended, or revised, including the requirement under 45 CFR §164.502(e)(2) to enter into a Business Associate Agreement with business associates who are subcontractors. This Business Associate Subcontractor Agreement (BA Agreement) sets forth the terms and conditions pursuant to which PHI that is created, received, maintained, or transmitted by the Business Associate Subcontractor from or on behalf of the Business Associate, will be handled between the Business Associate Subcontractor and the Business Associate and with third parties during the term of their Agreement and after its termination. The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

1.1 Services. Pursuant to the Agreement, Business Associate Subcontractor provides services (“Services”) for the Business Associate that involve the use and/or disclosure of PHI. Except as otherwise specified herein, the Business Associate Subcontractor may make any and all uses of PHI necessary to perform its obligations under the Agreement, provided that such use would not violate the Privacy and Security Regulations if done by Business Associate or the minimum necessary policies and procedures of the Business Associate. All other uses not authorized by this BA Agreement are prohibited. Moreover, Business Associate Subcontractor may disclose PHI for the purposes authorized by this BA Agreement only to its employees, subcontractors, and agents, in accordance with Section 2.1(i), or as otherwise permitted by the terms of this BA Agreement including, but not limited to, Section 1.2(b) below.

1.2 Business Activities of the Business Associate Subcontractor. Unless otherwise limited herein, the Business Associate Subcontractor may:

- a. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate Subcontractor provided that such uses are permitted under state and federal confidentiality laws.
- b. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate Subcontractor, provided that the Business Associate Subcontractor represents to the Business Associate, in writing, that (i) the disclosures are Required by Law, as that phrase is defined in 45 CFR §164.103 or (ii) the Business Associate Subcontractor has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 CFR §164.504(e)(4), and the third party agrees in writing to notify Business Associate Subcontractor of any instances of which it becomes aware that the confidentiality of the information has been breached.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

2.1 Responsibilities of the Business Associate Subcontractor. With regard to its use and/or disclosure of PHI, the Business Associate Subcontractor hereby agrees to do the following:

- a. Use and/or disclose the PHI only as permitted or required by this BA Agreement or as otherwise required by law.
- b. To the extent the Business Associate Subcontractor is to carry out one or more of Business Associate's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Business Associate in the performance of such obligation(s).
- c. Use appropriate safeguards to protect the privacy and security of PHI, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information (E PHI), to prevent use or disclosure of PHI other than as provided for by this BA Agreement.
- d. Business Associate Subcontractor acknowledges its obligations under HIPAA and agrees to comply with any and all privacy and security provisions not otherwise specifically addressed in the Agreement made applicable to Business Associate Subcontractor by HIPAA on the applicable effective date and any subsequent regulations promulgated under HIPAA and/or guidance thereto.
- e. Business Associate Subcontractor acknowledges that, (i) the foregoing requirements shall apply to Business Associate Subcontractor in the same manner that such requirements apply to Business Associate, and (ii) Business Associate Subcontractor shall be subject to the civil and criminal enforcement provisions set forth at 42 USC 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the requirements and any applicable guidance subsequently issued by the Secretary of the Department of Health and Human Services ("Secretary") with respect to such requirements.
- f. Disclose to its subcontractors, agents, or other third parties, and request from the Business Associate, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- g. Business Associate Subcontractor agrees that any E PHI it creates, receives, maintains, or transmits will be maintained or transmitted in a manner that is rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.
- h. Establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of PHI from Business Associate.
- i. Require all of its subcontractors and agents that receive, use, or have access to PHI under this BA Agreement to agree, in a written Business Associate Agreement, to adhere to the same or more stringent restrictions and conditions on the use and/or disclosure of PHI that apply to the Business Associate Subcontractor pursuant to this BA Agreement.
- j. Make available all records, books, agreements, policies, and procedures relating to the use and/or disclosure of PHI to the Secretary for purposes of investigating or determining compliance with HIPAA.
- k. Upon prior written request, make available to the Business Associate during normal business hours at Business Associate Subcontractor's offices all records, books, agreements, policies, and procedures relating to the use and/or disclosure of PHI from Business Associate to determine the Business Associate Subcontractor's compliance with the terms of this BA Agreement.
- l. Business Associate Subcontractor agrees to document any and all disclosures of PHI that require an accounting of disclosures as would be required under 45 CFR §164.528. Business Associate Subcontractor further agrees, within 30 days of receiving a written request from the Business Associate, to provide to the Business Associate such information as is requested by the Business Associate to permit the Business Associate to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 CFR §164.528.
- m. The Business Associate Subcontractor agrees to notify the Business Associate within seventy-two (72) hours of discovery of:
 - (i) any use or disclosure of PHI not provided for by the BA Agreement of which it becomes aware,
 - (ii) any suspected breach of unsecured PHI as defined at 45 CFR 164.402, and
 - (iii) any Security Incident of which it becomes aware.

Notification under this section shall include the identification of each individual whose PHI has been, or is suspected to have been, accessed, acquired, or disclosed. Business Associate Subcontractor further agrees to make available in a reasonable time and manner any information needed by Business Associate to respond to individual and governmental inquiries regarding any of the notifications received from Business Associate Subcontractor.

- n. The parties acknowledge and agree that this section constitutes notice by Business Associate Subcontractor to Business Associate of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents. "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate Subcontractor's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI.
- o. Business Associate Subcontractor agrees to indemnify the Business Associate for the reasonable cost to notify the individuals whose information was the subject of a breach and for any cost or damages, including attorney fees or fines, incurred by Business Associate as a result of the breach by Business Associate Subcontractor, including but not limited to any identity theft related prevention or monitoring costs.

2.2 Responsibilities of the Business Associate. With regard to the use and/or disclosure of PHI by the Business Associate Subcontractor, the Business Associate hereby agrees:

- a. To inform the Business Associate Subcontractor of any changes in the notice of privacy practices ("Notice") that the Covered Entity provides to individuals pursuant to 45 CFR §164.520 that affect Business Associate Subcontractor's use or disclosure of PHI.
- b. To inform the Business Associate Subcontractor of any changes in, or revocation of, the authorization provided to the Business Associate pursuant to 45 CFR §164.508, to the extent relevant to the Services being provided under this BA Agreement.
- c. To inform the Business Associate Subcontractor of any restrictions exercised by any individual to the extent relevant to the Services being provided under this BA Agreement.
- d. To notify the Business Associate Subcontractor, in writing and in a timely manner, of any arrangements permitted or required of the Business Associate under 45 CFR § part 160 and 164 that may impact in any manner the use and/or disclosure of PHI required by the Business Associate Subcontractor under this BA Agreement, including, but not limited to, agreed upon restrictions regarding the use and/or disclosure of PHI as provided for in 45 CFR §164.522.

2.3 Additional Responsibilities of the Business Associate Subcontractor with Respect to Handling of Designated Record Set. To the extent the Business Associate Subcontractor creates, receives, maintains, or transmits PHI in a Designated Record Set on behalf of Business Associate, the Business Associate Subcontractor hereby agrees to do the following:

- a. Within fifteen (15) days of request of the Business Associate, provide Business Associate access to the PHI so that Business Associate can respond to a request for access or request for copies of PHI by an individual who is the subject of the PHI, or his/her personal representative in accordance with 45 CFR §164.524.
- b. Within thirty (30) days of request of the Business Associate, provide Business Associate with access to PHI in the custody of Business Associate Subcontractor so that Business Associate can make any amendment(s) to the PHI in accordance with 45 CFR §164.526.

3. **MUTUAL REPRESENTATIONS AND CERTIFICATIONS.** Each Party represents and certifies to the other party that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed; it has the full power to enter into this BA Agreement and to perform its obligations hereunder; and that the performance by it of its obligations under this BA Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter, or bylaws.

4. **TERM AND TERMINATION**

4.1 Term. This BA Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this BA Agreement shall survive its expiration or other termination in accordance with Section 6.4 herein.

- 4.2 Termination by the Business Associate. As provided for under 45 C.F.R. §164.504(e)(2)(iii) and C.F.R. §164.504(e)(5), the Business Associate may immediately terminate this BA Agreement and any related agreements if the Business Associate makes the determination that the Business Associate Subcontractor has breached a material term of this BA Agreement. Alternatively, the Business Associate may choose to: (i) provide the Business Associate Subcontractor with thirty (30) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate Subcontractor an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate Subcontractor must cure said breach to the satisfaction of the Business Associate within thirty (30) days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this BA Agreement.
- 4.3 Termination by Business Associate Subcontractor. If the Business Associate Subcontractor makes the determination that the Business Associate has breached a material term of this BA Agreement, Business Associate Subcontractor may provide thirty (30) days notice of its intention to terminate this BA Agreement. Business Associate Subcontractor agrees, however, to cooperate with Business Associate to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this BA Agreement so long as the Agreement is in effect.
- 4.4 Automatic Termination. This BA Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Agreement between the Parties.
- 4.5 Effect of Termination. Upon the event of termination pursuant to this Section 4, Business Associate Subcontractor agrees to return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(J) and C.F.R. §164.504(e)(5) and retain no copies (which for purposes of this BA Agreement shall mean, without limitation, the destruction of all PHI maintained in any of from (including, but not limited to, all backup media). Prior to doing so, the Business Associate Subcontractor further agrees to recover any PHI in the possession of its subcontractors or agents, and upon request agrees to provide a certificate of destruction for all PHI stored or otherwise backed up by Business Associate Subcontractor or agents, subcontractors, or third parties providing storage or back up services on behalf of Business Associate Subcontractor. If the Business Associate Subcontractor determines that it is not feasible to return or destroy said PHI, the Business Associate Subcontractor will notify the Business Associate in writing. Upon mutual agreement of the Parties that the return or destruction is not feasible, Business Associate Subcontractor further agrees, and will require its subcontractors and agents to agree, to extend any and all protections, limitations, and restrictions contained in this BA Agreement to the use and/or disclosure of any PHI retained after the termination of this BA Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.
5. **CONFIDENTIALITY OBLIGATIONS.** In the course of performing under this BA Agreement, each Party may receive ("Receiving Party"), be exposed to, or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables, and studies, whether written or oral, fixed in hard copy, or contained in any computer database or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party ("Disclosing Party"). For purposes of this BA Agreement, "Confidential Information" shall not include PHI, the security of which is the subject of this BA Agreement and is provided for elsewhere. The Receiving Party, including their employees, agents, or representatives, (i) shall not disclose to any third party the Confidential Information of the Disclosing Party except as otherwise permitted by this BA Agreement, (ii) only permit use of such Confidential Information by employees, agents, and representatives having a need to know in connection with performance under this BA Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of the Receiving Party, (b) which is later publicly released by the Disclosing Party in writing, (c) which is lawfully obtained from third parties without restriction, or (d) which can be shown to be previously known or developed by the Receiving Party independently of the Disclosing Party.

6. **MISCELLANEOUS**

- 6.1 Survival. The respective rights and obligations of Business Associate Subcontractor and Business Associate under the provisions of Sections 4.5, and Section 2.1 solely with respect to PHI Business Associate Subcontractor retains in accordance with Sections 2.1 and 4.5 because it is not feasible to return or destroy such PHI, shall survive termination of this BA Agreement.
- 6.2 Amendments; Waiver. This BA Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- 6.3 No Third Party Beneficiaries. Nothing expressed or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- 6.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via electronic transmission or facsimile to the contacts listed below.

If to Business Associate Subcontractor, to:

 Attention: _____
 Fax: _____
 Email: _____

With a copy (which shall not constitute notice) to:

 Attention: _____
 Fax: _____
 Email: _____

If to Business Associate, to:

Chief Security Officer
 Division of Information Technology
 University of Maryland, Baltimore County
 1000 Hilltop Circle
 Baltimore, Maryland 21250
 Fax: 410.455.1713
 Email: _____

With a copy (which shall not constitute notice) to:

Office of the General Counsel
 University of Maryland, Baltimore County
 1000 Hilltop Circle
 Baltimore, Maryland 21250

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

- 6.5 Counterparts; Facsimiles and Electronic Copies. This BA Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and electronic copies hereof shall be deemed to be originals.

- 6.6 Disputes. If any controversy, dispute, or claim arises between the Parties with respect to this BA Agreement, the Parties shall make good faith efforts to resolve such matters informally.
- 6.7 Compliance with State Laws. The Business Associate Subcontractor acknowledges that by accepting the PHI from the Business Associate, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Regulations and the MCMRA conflict regarding the degree of protection provided for PHI, the Business Associate Subcontractor shall comply with the more restrictive protection requirement.

7. DEFINITIONS

- 7.1 Covered Entity. For purposes of this BA Agreement, Covered Entity shall include all entities covered by the notice of privacy practices (or privacy notice).
- 7.2 Business Associate. For purposes of this BA Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a hybrid entity under the Privacy Regulation, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. §164.105(a), as the Business Associate for purposes of this BA Agreement.
- 7.3 Business Associate Subcontractor. For purposes of this BA Agreement, Business Associate Subcontractor shall include the named Business Associate Subcontractor herein. However, in the event that the Business Associate Subcontractor is otherwise a hybrid entity under the Privacy Regulation, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. §164.105(a), as the Business Associate Subcontractor for purposes of this BA Agreement.
- 7.4 Designated Record Set. Designated Record Set shall have the meaning set out in its definition at 45 CFR §164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
- 7.5 Protected Health Information ("PHI"). Protected Health Information shall have the meaning as set out in its definition at 45 CFR §160.103, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
- 7.6 Security Incident. Security Incident shall have the meaning set out in its definition at 45 CFR §164.304, as it is subsequently updated, amended, or revised.
- 7.7 MCMRA. MCMRA means the Maryland Confidentiality of Medical Records Act, Md. Code Ann., Health-General, §4-301 et seq. as amended from time to time.

IN WITNESS WHEREOF, each of the undersigned has caused this BA Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

BUSINESS ASSOCIATE
UNIVERSITY OF MARYLAND,
BALTIMORE COUNTY

BUSINESS ASSOCIATE SUBCONTRACTOR

By: _____

By: _____

 Printed Name

 Printed Name

 Printed Title

 Printed Title

 Date

 Date

BUSINESS ASSOCIATE SUBCONTRACTOR

By: _____

Printed Name

Printed Title

Date

APPENDIX C
SOLICITATION TERMS AND CONDITIONS

SOLICITATION TERMS AND CONDITIONS

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

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

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

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

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

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

UMBC may cancel this RFP, in whole or in part, at any time.
7. **Incurred Expenses.**

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

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

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

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

A Proposer should give specific attention to the identification of those portions of the proposal that the Proposer deems to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland, as

amended. Proposers are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination as to whether the information may or may not be disclosed to the requesting party. That decision will take into consideration the Proposer's position regarding its proposal. A blanket statement by a Proposer that its entire proposal is confidential or proprietary will not be upheld.

12. **Proposal Affidavit and Certifications.**

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

13. **Economy of Preparation.**

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

14. **Multiple Proposals.**

Contractors may not submit more than one proposal.

15. **Alternate Solution Proposals.**

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

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

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

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

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

18. **Arrearages.**

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

19. **Taxes.**

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

20. **RFP Response Materials.**

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

21. **Debriefing of Unsuccessful Offerors.**

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

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

22. **Maryland Public Ethics Law, Title 5.**

The Maryland Public Ethics Law prohibits, among other things: State employees or officials (and in some cases, former employees) and businesses in which such an individual is employed or holds a financial interest from (i) submitting a bid or proposal, (ii) negotiating a contract, and (iii) entering into a contract with the governmental unit with which the individual is affiliated as provided in Title 5, Subtitle 5 of the General Provisions Article of the Annotated Code of Maryland, as amended.

If the bidder/offeror has any questions concerning application of the State Ethics law to the bidder/offeror's participation in this procurement, it is incumbent upon the bidder/offeror to see advise from the Maryland State Ethics Commission. The procurement

officer may refer any issue raised by a bid or proposal to the State Ethics Commission. The procurement officer may require the bidder/offeror to obtain advise from the State Ethics Commission and may reject a bid or proposal that would result in a violation of the Ethics law.

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

23. **Assistance in Drafting.**

Under the General Provisions Article § 5-508 of the Annotated Code of Maryland, an individual or person who employs an individual who assists an executive unit in drafting specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or request for proposals may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement. For questions regarding the applicability of this provision of the Public Ethics Law, contact the State Ethics Commission.

24. **Verification of Registration and Tax Payment.**

Each prospective offeror is encouraged to ensure that it is appropriately registered to do business in the State of Maryland, and in good standing with respect to taxes, personal property returns, unemployment insurance, etc., before the closing date. Failure to complete registration with the State Department of Assessments and Taxation (SDAT) may disqualify an otherwise successful offeror from recommendation for contract award.