MASTER AGREEMENT 21191 - ____

This Master Services Agreement (“Master Agreement” or “Agreement” or “Contract”) is made on this __ day of ______ 2020, by and between the University of Maryland, Baltimore County on behalf of the University System of Maryland (“USM”), and _________ (“Contractor” or “Consultant” or “______________”).

RECITALS

A. USM has requested a proposal (Solicitation RFP #BC- 21191-VHR) from Contractor for the provision of certain Enterprise Risk Management and Crisis Management (ERM/CM) consulting services to USM and any and all of its 12 Institutions, 3 regional higher education centers, and system office (individually “USM Institution”, or collectively “USM Institutions”).

B. Contractor has provided a proposal dated ____, 2020, and provided clarifications to this proposal dated, ____________, 2020 (if applicable) as well as a Price Proposal dated ____________, 2020, as subsequently clarified and amended (collectively the “Proposal”) in response to USM’s request. As a result, the parties enter into this Agreement to set forth their understanding;

NOW, THEREFORE, USM and Contractor agree as follows:

1. NATURE OF THE MASTER AGREEMENT FOR CONSULTING SERVICES. This Master Agreement for ERM/CM consulting services is entered into between USM and the Contractor. By virtue of their execution of TOCs or SOWs (herein subsequently defined), the USM and its individual USM Institutions agree to the terms of this Agreement. This Agreement shall consist of the following documents (including any materials made part thereof), stated in the order of precedence:

   a. A Change Order to a Task Order Contract (TOC) or Statements of Work (SOW);
   b. Task Order Contracts (TOC) or Statements of Work (SOW), executed from time to time, between a USM Institution and the Contractor, pursuant to this Master Agreement (each of which is incorporated in this Master Agreement whether or not physically attached). The USM Institution shall be responsible for the negotiations and implementation of all TOC/SOW requirements, terms, and conditions associated with this Master Agreement. If applicable, the parties will leverage information contained in the Solicitation RFP #BC-21191-VHR and all amendments to the solicitation, as well as Contractor’s Technical Proposal and Price Proposal provided in response to Solicitation RFP #BC- 21191-VHR, to develop mutually acceptable TOC or SOWs. The terms and conditions in TOCs or SOWs may supersede this Master Agreement if so indicated in the applicable TOC or SOW;
   c. This Master Agreement Form (pages 1 through ___) as may be amended from time to time;
   d. Contractor’s Task Order Proposal (TOP) to a Task Order Request for Proposal (TORP);
   e. USM Institution’s TORP;
   f. Solicitation RFP #BC - 21191-VHR Section III, Article 1, Paragraph ____ Staffing of the Contractor Key Personnel.
1.1 The Contractor shall perform the Services as described in the applicable TOC or SOW. Services shall be performed in accordance with this Agreement. The Contractor shall perform the Services expeditiously and with professional skill and care in accordance with the prevailing industry standards.

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

1.2 Implementation Process: A USM Institution, at its sole option, may from time to time prepare a TORP which sets out the USM Institution’s Service needs and contractual requirements. The Contractor shall submit a TOP to the USM Institution in response to the issued TORP; such TOP shall include a price proposal based on the applicable rates per this Master Agreement and other information as requested in the TORP for evaluation by the USM Institution. The TOP will set forth the Contractor’s tasks, deliverables, and schedule. The USM Institution, at its sole discretion, will select the most advantageous TOP for the award. If Contractor’s TOP is accepted by the USM Institution, the USM Institution shall issue, as may be applicable to the TORP and negotiated between the USM Institution and the Contractor, a TOC or purchase order (PO) incorporating the TOP, which shall become part of this Agreement. (Exhibit A attached to this Agreement generally outlines the Implementation Process which may be adapted to the USM Institution’s specific needs and requirements.)

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

Contractor is to provide a semi-annual report of fees collected under this Agreement and any TOC/SOW/PO procured by a USM Institution under this Agreement to the USM Procurement Officer or his/her designee. The format and presentation of the data by the Contractor is to be agreed to by the USM Procurement Officer or his/her designee prior to the submittal of the first report.

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

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

1.3.1 The rates provided in the Price Proposal, included as Exhibit _____ to this Agreement, will be used to negotiate the fees associated with any TOC, PO, or SOW including any modifications to same, as well as for contract modifications to this Master
Agreement. These hourly rates are the maximum hourly rates for all USM Institutions.

For a given TORP procured under this Master Agreement, nothing prohibits a USM Institution from negotiating better hourly rates. The Contractor is not obligated to extend any better hourly rates from one USM Institution to any other USM Institution. The hourly rates are valid through June 30, 2023.

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

1.4 USM will designate a staff member to act as contract coordinator (“USM Contract Manager”) between USM and the Contractor for issues regarding the Master Contract.

For any TOC, SOW, or PO performed under the Master Agreement, the USM Institution will designate a staff member to act as coordinator (“Project Manager”). Throughout the period of the TOC, SOW, or PO, copies of all correspondence, work products, specifications, estimates, and other materials prepared by the Contractor should be directed to the Project Manager and to any other USM Institution personnel designated by the Project Manager. The Project Manager shall be able and willing to oversee and monitor the ongoing activities related to the services, and shall possess suitable skill, knowledge and experience to be able to carry out the aforementioned management responsibilities.

1.5 Key Personnel/Staffing

1.5.1 Master Agreement Key Personnel:

The Contractor’s dedicated Account Representative for the USM Institutions and the Executive Manager for the USM (“Master Agreement Key Personnel”) shall be the same team identified in the Contractor's submittal responding to USM’s solicitation. However, Contractor and USM acknowledge that staffing and personnel changes may be required as a result of actions outside of Contractor’s control, such as termination of an individual’s employment or life event changes that may impact a Master Agreement Key Personnel’s ability to consistently perform their duties for USM at the expected level. No substitutions or replacement of the Master Agreement Key Personnel shall be permitted unless necessitated by a Master Agreement Key Personnel’s sudden illness, death, or resignation, leave of absence, other reasons outside of Contractor’s reasonable control, or as otherwise approved by the Procurement Officer which approval shall not unreasonably be withheld. In any of these events, the Contractor shall promptly notify the Procurement Officer in writing. To the extent practicable, the request to substitute a Master Agreement Key Personnel team member shall be made at least ten (10) business
days, unless another agreed upon time period, in advance of the proposed substitution and shall contain the information required below. The Procurement Officer must agree to the substitution or replacement in writing before it shall become effective, and such agreement may not be unreasonably withheld.

All proposed substitutions or replacement of Master Agreement Key Personnel shall have qualifications at least equal or better to that of the person initially proposed by the Contractor and evaluated and accepted by USM. The burden of illustrating this comparison shall be the Contractor’s. If one or more of the Master Agreement Key Personnel are unavailable for work under this Contract for a continuous period exceeding fifteen (15) business days, the Contractor shall immediately notify Procurement Officer and propose to replace Master Agreement Key Personnel with personnel of equal or better qualifications within fifteen (15) business days of notification. All requests for substitutions or replacement shall include a detailed explanation of the circumstances necessitating the proposed substitutions, a resumes of proposed substitutes, and any other information requested by the Procurement Officer to make a determination as to the appropriateness of the proposed substitution (“the Selection Process”). As part of the Selection Process, USM, at its sole discretion, may interview the proposed substitutes as well as check references of other clients where the substitutes was assigned.

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

1.5.2 Personnel/Staffing and Contractor’s subcontractor’s personnel for TOC, SOW, PO: Section 1.5.1 also applies to any and all Task Order Contract Key Personnel that may have been requested by a USM Institution in a TORP and subsequently were identified in the Contractor’s response to the USM Institution’s TORP. For the purpose of a TORP/TOC/SOW/PO, the term “USM” in Section 1.5.1 shall be replaced with the term “USM Institution” and the term “Master Agreement Key Personnel” in Section 1.5.1 shall be replaced with the term “Task Order Contract Key Personnel”. Additionally, the USM Institution, may at its sole option, request a change in the Contractor’s other personnel, its subcontractors, or subcontractor’s personnel if deemed to be in the best interest of the USM Institution.

1.5.3 For all TOC, SOW, or PO’s, the Contractor shall manage the Work of its own staff (both onsite and remote) and coordinate the Work with the activities and responsibilities of the USM Institution to complete the Work in accordance with the TOC, SOW, or PO. The Contractor shall establish organization and lines of authority in order to carry out the overall plans of the engagement. The Contractor’s Project Manager will take his/her direction from the USM Institution’s Project Manager.

1.5.4 Unless stated otherwise in a TOC, SOW, or PO, the work week for the Contractor’s staff is not to exceed forty (40) hours without prior written approval by the Project Managers of both parties.
1.5.5 Major changes in the Contractor’s organization or personnel (other than the Contractor’s Master Agreement Key Personnel, as in that case, Section 1.5.1 applies) that would prevent Contractor from performing the Work as required by this Agreement, shall be reported to the Procurement Officer in writing as they occur.

This Section 1.5.5 applies to any TOC, SOW, or PO performed under this Master Agreement. Major changes in the Contractor’s organization or personnel (other than the Contractor’s Task Order Contract Key Personnel, as in that case, Section 1.5.2 applies) that would prevent Contractor from performing the Work as required by the TOC, SOW, or PO shall be reported to the USM Institution in writing as they occur.

1.6 **Contractor Team Organization and Staffing** – For any TOC, SOW, or PO, the Contractor’s Project Manager and USM Institution’s Project Manager or designee shall review the personnel support model on a regular basis to review the staffing, workload, and delivery of the Services. Upon mutual agreement between the USM Institution and the Contractor, staffing resources levels will be evaluated and adjusted to suit the USM Institution’s project needs. If the Contractor’s Project Manager and USM Institution’s Project Manager or designee are unable to resolve any resulting conflicts, the issue will be elevated and resolved by the parties’ Executive Managers or the USM Institution’s Procurement Officer as may be appropriate.

1.7 **Project Plan**

If a comprehensive Project Plan is not included in the USM Institution’s TORP, for each TOC, SOW, or PO, the Contractor and the USM Institution will collaboratively develop a comprehensive project plan, as may be required. The USM Institution and Contractor shall mutually agree upon the project management tools to be utilized. Any final plan shall be mutually agreed upon. If a high level, draft project plan was provided by the Contractor to the USM Institution within its Task Order Proposal as well as at the discussion sessions, Contractor agrees that this project plan was provided for information and evaluation purposes only and affirms that both are subject to change in accordance with this Section 1.7. Contractor further affirms that the required project methodology, if any was specified in the TORP, was included in the draft Work Plan and has been accounted for within the Contractor’s Task Order Proposal and will be accounted for in the final approved project plan described in this section.

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

Components of the Project Plan or SOW may include, but are not limited to:
- Main work streams/projects (requirements and/or process definition, etc.) inclusive of the required methodology
- Team leads/owners of each work stream
- Tasks, owners, resources, and descriptions under each work stream, inclusive of designated Contractor and USM Institution’s resources and roles
- Any relevant assumptions
- Major dependencies, issues, and open questions
- Timelines with milestones and deliverables for each work stream and task item inclusive of prioritization of review and approvals required by USM Institution
- Evaluation and Acceptance Procedures for the milestones and deliverables as
applicable (see 1.7.1 below.)

- Creation of a medium to house and track the project plan for all key stakeholders to use.
- Comprehensive communication plan for both the implementation and post implementation support phases of the engagement
- Comprehensive change management plan
- Comprehensive testing plan for the implementation and post implementation support phases of the engagement
- Comprehensive training plan, including knowledge transfer, for both the implementation and post implementation support phases of the engagement
- Comprehensive cut over plan
- If applicable, a detailed data migration plan defining the level of data to be converted to enable relevant legacy data to be available in accordance with documented requirements as specified in either the Project Plan or the SOW, and,
- If applicable, a comprehensive phase-in and phase-out for the transition from the current existing providers

Once the Project Plan and SOW is established and mutually agreed via a written TOC amendment that is executed by both parties, the parties shall work diligently to meet the timelines set forth in the project plan. Once memorialized in the written TOC amendment, both parties acknowledge that the scope of work, standard processes, and related work plans are in continuous development and therefore may be revised as necessary and appropriate over the course of the project. Refer to Section1.3.3 for those revisions that require contract amendments.

1.7.1 Evaluation and Acceptance Procedures

a) The evaluation and acceptance procedures should be defined by the USM Institution in each TOC, SOW, or PO.

b) However, absent such evaluation and acceptance procedures, or unless specifically stated otherwise in the Project Plan or SOW that is developed in accordance with Section 1.7 above, the following procedures will apply:

   i) Upon completion and delivery of each Deliverable, the USM Institution will begin the evaluation and acceptance process, which shall include, but not be limited to, the steps described below. Contractor will notify the USM Institution in writing that the Deliverable has been completed.

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

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

iv) Notwithstanding the foregoing provisions of this Section, approval of a
Deliverable shall be deemed given by the USM Institution if the USM
Institution has not delivered to Contractor a notice of deficiencies for such
Deliverable prior to the expiration of any period for the USM Institution review
thereof as set forth in this Section, or if USM Institution uses the Deliverable in
production.

v) In the event an approved Deliverable differs from the specifications for such
Deliverable, the specifications shall be deemed modified to conform with such
approved Deliverable.

vi) If either party fails to meet the evaluation period described above, or
any other periods of time as mutually agreed to, the other party may declare
the Contract in material breach and begin the termination process as
defined in Section 12.1 of this Contract.

1.8 Operations Meetings - At the sole discretion of the USM Institution, Operations Meetings
may be held on a regular basis for a TOC, SOW, or PO. The agenda for such meetings will be
mutually developed. A kick-off meeting to the TOC, SOW, or PO and the provision of the
Services between appropriate representatives of both parties is to be held within fourteen (14)
days from the Effective Date of the TOC, SOW or PO, unless another date is mutually agreed.
The purpose of the kick-off meeting is to introduce the key personnel of both sides to each other
and begin the planning process described in 1.7 above for the Services.

The Contractor’s Project Manager or designee will co-lead the meetings. Meeting notes will be
provided to Contractor’s Executive Manager and USM Institution’s Project Manager for review
and feedback prior to distribution to all attendees and other designees indicated by the USM
Institution’s Project Manager. Other representatives of the USM Institution and the Contractor
may attend meetings and shall receive all notices and minutes of meetings. These meetings may
be attended by Contractor’s Executive Manager in person or by phone so that Contractor’s
management is up-to-date on service activities. Contractor is expected to have appropriate
personnel in attendance at select meetings based on the agenda items.

1.9 Executive Meetings - The USM Institution may establish an Executive Steering
Committee that will drive decisions. The USM Institution, at its sole discretion, may include
the Contractor’s Executive Manager as needed.

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

1.11 There is no Minority Business Enterprise (MBE) goal set for the overall spend applicable to the Master Agreement, however, a USM Institution may establish a MBE goal as part of the TORP process. MBE goals, if any, will comply with the USM Institution’s jurisdiction regarding such socio-economic programs. Refer to the State of Maryland’s website https://gomdsmallbiz.maryland.gov/Pages/mb-Program.aspx for further information regarding the MBE requirements.

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

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

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

2.3 “Contractor-Owned Materials” means those Materials owned or licensed by Contractor or its subcontractors which may be independently developed or supplied by Contractor and licensed to USM or a USM Institution in connection with the Services, Work and Deliverables. Contractor-Owned Materials includes, but is not limited to, any materials existing before the Services and developed outside the scope of the Services.

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

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

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

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

2.8 "Services or Work" means the products and services to be performed and provided by Contractor as specified in a TORP, TOP, TOC, or TOC Change Order/Amendment which may include, but not be limited to, development of plans and strategies, training, analysis, design, implementation, and consulting.

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

2.10 USM Institution means any of the twelve (12) institutions, three (3) regional higher education centers, and system office of USM that are eligible to purchase under this Agreement.

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

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

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

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

2.15 Day or day – Calendar day unless otherwise specified.

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

2.17 Contractor’s Account Representative: Contractor’s person that USM Institutions will directly
contact for ERM/CM Professional Consulting Services needs and utilization of this Master Agreement.

2.18 **Contractor’s Executive Manager:** Contractor’s person who is the sole point of contact to the USM Procurement Officer or his/her designee for administrative and contractual communications.

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

2.20 **Purchase Order:** Purchase Order (“PO”) (and Change Orders to Purchase Orders) as used throughout this Agreement includes Purchase Orders and Change Orders to Purchase Orders issued by USM Institutions that may contain preprinted PO Terms and Conditions. The preprinted Terms and Conditions will not supersede the terms and conditions in the Master Agreement unless the PO Terms and Conditions are specifically accepted in writing by the parties.

3. **TERM OF AGREEMENT**

3.1 The term of this Agreement (the “Term”) shall commence on the date of execution of this Agreement by the USM and continue through June 30, 2023 unless otherwise extended or terminated as provided in this Agreement or as a matter of law.

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

3.3 **Termination by Notice:** In addition to the termination rights as set out in Section 12 of this Agreement, USM reserves the right to cancel or discontinue, with thirty (30) days notice to the Contractor, the Master Agreement (or, the USM Institution reserves the right to cancel or discontinue any TOC, SOW, or PO done under the Master Agreement) at any time during the Term of the Master Agreement or TOC, SOW, or PO, whichever is applicable, without penalty if deemed in its best interest. As well, USM, or the USM Institutions, may elect, at its sole discretion, to procure the services in another manner as this Master Agreement is non-exclusive. If the USM elects to discontinue the Master Contract or a USM Institution elects to discontinue a TOC, SOW, or PO, a summation of work in progress will be made by the Contractor, subject to approval by the USM or the USM Institution, whichever is applicable, and a mutual agreement as to how to finalize this work in progress will be made. In the case of the Master Agreement, the USM, or in the case of a TOC, SOW, or PO, the USM Institution, whichever is applicable, shall be obligated to pay any valid charges incurred by Contractor for Services provided through the effective date of termination.

3.4 Any TOC that commences during the Term of the Master Agreement may be completed under the terms and conditions of this Agreement even if the Agreement has been terminated under this Section 3 or expired and the terms of this Agreement shall remain in full force and effect for the applicable TOCs.
4. **PAYMENT TERMS**

4.1 Payment will be made in accordance with the terms and conditions set forth in this Agreement or in accordance with a TOC, SOW, or PO purchased under this Agreement. Contractor’s fees for hosting and professional services shall not exceed the rates set forth in the Master Agreement per the Proposal unless the Proposal has been subsequently clarified and amended, as attached herein as Exhibit ______. The USM Institution will be responsible for the processing of all payments to the Contractor.

4.2 **Invoicing**

4.2.1 Payment requests (invoices) shall be submitted electronically to the USM Institution and must be in U.S. Dollars and must contain the following: state "Invoice" on the bill; reference the date and description of the work/services indicated on the invoice; the Contractor’s Federal Employer's ID Number or Social Security Number; the USM Institution’s TOC or Purchase Order Number, and additional information as may be specifically required elsewhere in this Agreement or by the USM Institution.

4.2.2 Payments to Contractor pursuant to this Agreement shall be made no later than 30 days after USM Institution’s receipt of a proper invoice from Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited.

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

4.2.4 For time and material TOC/SOW/PO’s, the USM Institution will pay only for hours worked for each assigned Contractor’s personnel at the quoted fully loaded hourly rates for onsite work or the hourly rate for remote work, whichever is applicable. Unless stated otherwise in a TOC/SOW/PO, the USM Institution will not reimburse for travel expenses or any other applicable business expenses.

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

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

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

4.3 Taxes - The USM is tax exempt.

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

5. **OWNERSHIP AND PROPRIETARY RIGHTS**

5.1 Contractor owns and retains all right, title and interest in Contractor-Owned Materials. USM or USM Institution owns and retains all right, title and interest in USM-Owned Materials or USM Institution-Owned Materials. USM Institution Students own and retain all right, title and interest in USM Institution Student-Owned Material. USM and the USM Institution acknowledges and agrees that, unless otherwise agreed by Contractor in writing, Contractor is the sole and exclusive owner of all rights, including but not limited to all patent rights, copyrights, trade secrets, trademarks, and other proprietary rights in the systems, programs, specifications, user documentation, and other Contractor-Owned Materials used by Contractor in the course of its provision of services hereunder. USM and the USM Institution also acknowledges and agrees that in entering into this Agreement, USM or the USM Institution acquires no ownership rights in Contractor-Owned Materials. USM and the USM Institution agree that its rights to use any such materials or data provided by Contractor, including all Contractor-owned Materials, is limited to such use as is necessary to permit implementing Contractor’s Services and to perform its obligations under this Agreement.

USM or USM Institution shall not copy, transfer, sell, distribute, assign, display, or otherwise make Contractor-Owned Materials available to third parties. Contractor acquires no rights of ownership in or to the USM-Owned Materials or USM Institution-Owned Materials or the Student-Owned Materials; or anything that is provided to Contractor by USM or the USM Institution or the USM Institution Student, including but not limited to business processes, software and related documentation. Any modifications or enhancements to the USM-Owned Materials or USM Institution-Owned Materials or the Student-Owned Materials including those created by Contractor specifically for such parties as part of its Deliverables, shall belong to USM or the USM Institution. Contractor agrees that its rights to use any such materials, information, or data provided by USM or the USM Institution or USM Institution Student, including all USM-Owned Materials, or USM Institution-Owned Materials or USM Institution Student-Owned Materials is limited exclusively to such use as is necessary to permit Contractor to perform Services and obligations in this Agreement.

5.2 Notwithstanding anything in the Agreement to the contrary and subject to Contractor-Owned Material rights in this Section 5 and Payment Terms in Section 4, any and all Deliverables and Work shall be the sole and exclusive property of USM or the USM Institution. Contractor may retain a copy of all Deliverables or Work for its internal business purposes. 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 SOW shall be Contractor-Owned Material.

All Deliverables and Work are created solely for the USM or USM Institution’s use. The information contained in the Deliverables prepared by Contractor in the course of providing Services under the terms of this Agreement is for the sole use of the USM or USM Institution in accordance with the purpose of the Agreement hereunder.

5.3 Upon USM’s or USM Institution’s request or upon the expiration or termination of this Agreement, Contractor shall deliver, destroy, or return all copies of the Work to USM or the USM Institution, as USM or USM Institution remits payment to Contractor for all Services rendered with respect to such Work. Contractor is permitted, subject to its obligations of confidentiality, to retain one copy of the Work for archival purposes and to defend its work product, or if such return or destruction is not feasible, continue to treat all such information confidential in accordance with applicable law and with the limits provided in this Agreement.
Contractor shall provide USM or USM Institution with a Certificate of Destruction upon request.

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

5.6 USM and the USM Institution recognize that Contractor’s business depends substantially upon the accumulation of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops in its engagements. USM’s and the USM Institution’s business also depends substantially upon the accumulation and application of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops through collaboration with contractors and other service providers. Accordingly, to the extent material that is used in, enhanced, or developed in the course of providing Services hereunder is of a general abstract character, or may be generically re-used, and does not contain Confidential Information of USM or the USM Institution or the USM Institution Students, 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. USM and the USM Institution will own the Know-how developed by USM and/or the USM Institution. To the extent such Know-how is contained or reflected in the Work, each party hereby grants the other a fully paid up, perpetual license to use such Know-how. Neither party will sublicense or sell Know-how of the other party to any third party and will not use or exploit the Know-how of the other party to compete with the information technology and professional services of Contractor or the educational services and delivery of the USM and USM Institution.

5.7 Unless agreed otherwise in writing by a USM Institution, in the event of loss of any data, information, or records necessary for the performance of this Agreement, or any TOC, SOW, or PO, where such loss is due to the error, negligence, or intentional wrongdoing of the Contractor or any of its subcontractors, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data, information, or records, subject to Section 11. Limitation of Liability of this Agreement.

6. PROPRIETARY AND CONFIDENTIAL INFORMATION

6.1 Contractor acknowledges and understands that in connection with this Agreement, the performance of the Statement of Work and otherwise, Contractor has had or shall have access to, has obtained or shall obtain, or has been or shall be given the USM’s or the USM Institution’s Confidential Information (as defined herein). For purposes of this Agreement, and unless agreed otherwise by the USM Institution or agreed by the parties, “Confidential Information” means any and all information provided by USM, the USM Institution, or USM Students to Contractor, including, without limitation, information concerning the USM’s, or the USM Institution’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 personally identifiable information which is generated by the student, such as biometrics. Confidential Information includes information in any and all formats and media, including without limitation oral, and includes the originals and any and all copies and derivatives of such information.

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

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

6.4 Contractor acknowledges and understands that USM and the USM Institutions are required to protect certain Confidential Information from disclosure under applicable law, including but not limited to the Family Educational Rights and Privacy Act (“FERPA”), the Health Insurance Portability and Accountability Act (“HIPAA”), the Gramm Leach Bliley Act (“GLBA”), or the Maryland Public Information Act (“PIA”), including regulations promulgated thereunder, as the laws and regulations may be amended from time to time (collectively the “Privacy Laws”). The Confidential Information that is protected under FERPA was provided to the Contractor as it is handling an institution service or function that would ordinarily be performed by USM’s employees. Contractor agrees that it shall be obligated to protect the Confidential Information in its possession or control in accordance with the Privacy Laws and as a “school official” under FERPA. The Contractor further agrees that it is subject to the requirements governing the use and redisclosure of personally identifiable information from education records as provided in FERPA. Furthermore, the Contractor acknowledges that it may be in receipt of health information rendered confidential under the HIPAA and affirms that it will maintain, use, share, and destroy that information in compliance with HIPAA.

6.5 Contractor may disclose Confidential Information as required by law. If Contractor is required by law to disclose Confidential Information, Contractor shall promptly notify USM or the USM Institution, whichever is applicable, and before disclosing such information shall allow USM or the USM Institution, whichever is applicable, reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.

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

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

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

Procurement Officer
UMBC
Department of Procurement and Strategic Sourcing  
Administration Building, 7th Floor  
1000 Hilltop Circle  
Baltimore, MD 21250  

AND  

To the USM Institution’s Legal Office or designee  

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

6.10 Contractor agrees to use Student-Owned Materials, USM-Owned Materials and USM Institution-Owned Materials, and USM’s and USM Institution’s Confidential Information only as necessary to perform its responsibilities under this Agreement. Contractor shall keep these materials and information confidential in accordance with this Agreement and shall use reasonable commercial efforts to prevent and protect the contents of these materials, or any parts of them, from unauthorized disclosure. Further, Contractor will take industry standard measures to protect the security and confidentiality of such information including controlled and audited access to any location where such confidential and proprietary data and materials reside while in the custody of Contractor and employing security measures to prevent system attacks (e.g., hacker and virus attacks).  

6.11 Unless otherwise provided by separate agreement, Contractor shall have sixty (60) days upon termination of this Agreement or a TOC/SOW/PO, as may be applicable, or upon earlier request by USM or the USM Institution, to return to USM or the USM Institution, all USM-Owned Materials, USM Institution-Owned Material, or USM’s or USM Institution’s Confidential Information, all data, information, and software provided to Contractor by USM or USM Institution, student records, and any other proprietary information or materials that have not already been purged pursuant to this Agreement. Alternatively, and at USM’s or the USM Institution’s option, Contractor shall destroy any or all of the aforementioned beyond recoverability in compliance with the National Institute of Standards and Technology (NIST), as applicable. Contractor may retain one full version of part or all of the aforementioned data for the sole purposes of demonstrating contractual compliance. Any data, including electronic backups created in the ordinary course of Contractor’s business, referred to in this section that is still within Contractor’s actual or constructive control shall be subject to the terms of this Agreement in perpetuity. Except as otherwise provided herein, Contractor shall not retain any electronic or other copies of any of the data or information contemplated herein without the prior written authorization from USM or the USM Institution.  

6.12 Unless otherwise provided by separate agreement, upon termination of this Agreement, USM and the USM Institution shall return to Contractor all Contractor-Owned Materials, including software, Source Code, and documentation provided to USM or the USM Institution by Contractor; alternatively and at Contractor’s option, USM and the USM Institution shall destroy any or all of the aforementioned beyond recoverability. USM or the USM Institution shall not retain any electronic or other copies of any Contractor-Owned Materials or other Contractor Proprietary and
Confidential Information absent of prior written authorization from Contractor.

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

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

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

6.16 During the course of the engagement, the parties may need to electronically transmit Confidential Information to each other and to third-party service providers of other entities engaged by either party. Electronic methods include telephones, cell phones, e-mail, cloud services and fax. These technologies provide a fast and convenient way to communicate. However, all forms of electronic communication have inherent security weaknesses, and all reasonable security measures should be taken in order for the risk of compromised confidentiality. The USM and the USM Institutions and Contractors agree to the use of electronic methods to transmit and receive information, including confidential information. Both parties agree to utilize the agreed upon security measures and industry standards in securing confidential information electronically.

7. REPRESENTATIONS AND WARRANTIES

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

7.2 Compliance with Laws

Contractor hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to, the payment of taxes and
employee benefits, and that it shall not become so in arrears during the term of this Agreement;

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

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

7.3 Warranties for Professional Services

Contractor hereby Warrants and Represents:

A. That it shall perform all of the Work in a professional manner in accordance with industry standards and that the services and deliverables will conform to the specifications in the Agreement. The parties may also agree to include in a TOC, SOW, or PO additional warranties as applicable based on the nature and scope of services.

B. Contractor’s hardware, software and its components are equipped and designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information.

C. Contractor has used industry standards for vulnerability testing and software quality code reviews to provide that Contractor software is free of any and all "time bombs," computer viruses, copy protect mechanisms or any disclosed or undisclosed features which may disable Contractor software or render it incapable of operation (whether after a certain time, after transfer to another central processing unit, or otherwise). This Section 7.3 (C) does not apply to any software which USM or the USM Institution procures independently of Contractor.

D. If applicable: For any Contractor software, the physical medium on which the software is distributed is free from defects in materials and workmanship under normal use, the software will perform according to the nature of the agreement, and to the best of Contractor’s knowledge USM’s or the USM Institution’s use of the software is not an infringement of any third party’s intellectual property rights. This Section 7.3 (D) does not apply to any software which USM or the USM Institution procures independently of Contractor.

E. If applicable: If Contractor is providing hosting services, the Contractor hereby warrants and represents that Contractor has used industry standards for vulnerability testing and software quality code reviews to ensure that the hosted environment, as delivered, does not contain any program code, virus, worm, trap door, back door, timer, or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of Contractor-selected conditions, or manually on the command of Contractor.

F. SECURITY

F.1 Unless stated differently in a TOC, SOW, or PO issued by a USM Institution, Contractor shall endorse USM’s requirement to adhere to the University System of Maryland’s (USM) IT Security Standards (http://www.usmd.edu/usm/adminfinance/itcc/ITSecResource.html). USM and the USM Institutions are required to assess risks, ensure data integrity, and determine the level of accessibility that must be maintained. Specific activities include:

- Identification of security, privacy, legal, and other organizational requirements for recovery of institutional resources such as data, software, hardware, configurations,
and licenses at the termination of the Agreement.

- Assessment of the contractor’s security and privacy controls.
- Including USM’s or the USM Institution’s security and privacy requirements in the agreement
- Periodic reassessment of contractor services provisioned to ensure all Agreement obligations are being met and to manage and mitigate risk.

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

F.3 Contractor will implement security measures at its offices and all other associated facilities in connection with Contractor software in accordance with Section 6.10 of this Agreement. These measures will include, without limitation, encryption, use of a sign-on and access privilege system and other measures described in this Agreement, and such other measures as Contractor deems necessary in its professional discretion. Contractor shall (i) establish and maintain industry standard technical and organizational measures to help to protect against accidental damage to, or destruction, loss, or alteration of the materials; (ii) establish and maintain industry standard technical and organizational measures to help to protect against unauthorized access to the Services and materials; and (iii) establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Services. Contractor software and its components are equipped and/or designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information.

F.4 Contractor will promptly report any confirmed or suspected breach of USM or the USM Institution’s data to the appropriate designee of the USM and/or the USM Institution within 24 hours or sooner, unless shorter time is required by law, or required by the USM Institution in a TOC/SOW/PO, of discovery or detection. Contractor will notify the USM Institution within 24 hours or sooner, unless shorter time is required by law, or required by the USM Institution in a TOC/SOW/PO, of any confirmed or suspected computer security or operational incidents not resulting in breach of the USM Institution’s data, including but not limited to Contractor-based technical problems, power outage affecting authentication, suspicion concerning identity of person logging on, Contractor or Contractor’s subcontractor system intrusions (e.g., attack by hacking, virus infection).

F.5 Contractor will follow strong identity management characteristics and practices, requiring users to adhere to organizational usage, construction, and change requirements.

F.6 If Contractor hosts any of USM’s or a USM Institution’s information, Contractor will configure and maintain network to be suitably hardened against security threats and provide for adequate performance.

F.7 If Contractor hosts any of USM’s or a USM Institution’s information, on an annual basis, Contractor shall provide to the USM or the USM Institution, as may be applicable, a Service Organization Control (SOC) 2 reports or equivalent, for all services and facilities from which the Services are provided. It is the Contractor’s responsibility that such Reports are provided under the terms and conditions of this Contract without the USM or the USM Institution being required to agree to additional terms and conditions that may be applied by a third party. If a Report states that the services or a facility has failed to materially satisfy one or more control objectives, Contractor will, at USM’s or the USM Institution’s sole remedy, use commercially reasonable efforts to cause the services or facility to materially satisfy all control objectives. If, despite
Contractor’s efforts, the services or facility cannot materially satisfy all relevant control objectives, Contractor will mitigate the issue in a commercially reasonable manner which may include the migration to an alternate facility which materially satisfies all control objectives. Failure to do so may be considered a material breach of this Agreement or a Task Order/SOW/Purchase Order in the sole and reasonable discretion of USM or the USM Institution, whichever is applicable.

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

F.9 Unless stated otherwise in a TOC/SOW/PO, or hosting agreement, USM or the USM Institution, as may be applicable, shall have sixty (60) days, unless another timeframe is mutually agreed, after the expiration or termination date of this Agreement, or the TOC/SOC/PO, to retrieve and download information and content. The Contractor shall make available to USM or the USM Institution a complete and secure (i.e. encrypted and appropriately authenticated) download file of customer information, sales, and product information in .xml format including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format.

8. INSURANCE

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

- Comprehensive General Liability Insurance including all extensions:
  $2,000,000 each occurrence;
  $2,000,000 personal injury;
  $2,000,000 general aggregated;

- Workers Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland;

- Property damage liability insurance with a limit of not less than $2,000,000 for each accident;

- Errors and Omissions insurance with limits of $2,000,000 per occurrence;

- Automobile bodily injury liability insurance with limits of not less than $1,000,000 for each person and $2,000,000 for each accident, and property
damage liability insurance, with a limit of not less and $2,000,000 for each accident; and

- Professional Liability with a limit of not less than $1,000,000

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

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

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

8.3 Contractor shall directly notify the Procurement Officer in writing thirty-days (30) in advance of the effective date of any cancellation or reduction of Contractor’s insurance policies. Notices of policy cancellations or reductions shall be furnished to the Procurement Officer. All required insurance coverages must be acquired from insurers allowed to do business in the State of Maryland. The insurers must have a policy holder's rating of "A-or better".

9. **INDEMNIFICATION**

9.1 In addition to the obligations to indemnify set forth elsewhere in the Agreement, Contractor will indemnify, defend and hold harmless USM, the USM Institutions, their employees, contractors, and agents, from any and all loss, damage, injury, or liability attributable to claims of third parties for bodily injury, death, physical damage to real or tangible personal property or the disclosure of personally identifiable information or confidential and proprietary information to the extent arising directly out of the negligent or intentional acts or omissions conducted by Contractor, its employees, subcontractors, or agents related to their performance and operations under this Agreement, provided that USM or the USM Institution: (a) notifies Contractor promptly in writing of any such claim or proceeding, (b) reasonably cooperates with Contractor in defending any such claim or proceeding, and (c) in no event shall USM or the USM Institution settle any such claim without Contractor's prior written approval.

9.2 Contractor will indemnify, defend, and hold harmless USM, USM Institutions, their employees, contractors, and agents, from any and all loss, damage, injury, or liability attributable to claims of third parties for patent infringement, or trademark or copyright arising out of the purchase or use of materials, software, supplies, equipment, service or Deliverable by Contractor under this Agreement, except to the extent that such infringement or violation arises from, or could have been avoided except for (i) modification of such Deliverable other than by Contractor or its subcontractors or use thereof in a manner not contemplated by this Agreement, (ii) the failure of the indemnified party to use any corrections or modifications made available by Contractor, (iii) information, materials, instructions, specifications, requirements or designs provided by or on behalf of the indemnified party, or (iv) the use of such Deliverable in combination with any platform, product, network or data not provided by Contractor. Contractor’s obligation to indemnify under this section is conditioned on USM or the USM Institution: (a) notifying Contractor promptly in writing of any such claim or proceeding, and (b) reasonably
cooperating with Contractor in defending any such claim or proceeding.

9.3 If USM’s or the USM Institution’s use of Contractor’s software or Services becomes, or in Contractor’s opinion is likely to become, enjoined as a result of a claim pursuant to this Section, Contractor, at Contractor’s expense, shall either procure USM’s or the USM Institution’s right to continue using the software or Services, or replace or modify the same so that it becomes non-infringing (provided replacement or modified software or Services have substantially comparable functionality to the original software or Service) or, in the event performing the foregoing options are not commercially reasonable, refund to USM or the USM Institution the fees paid for the particular software or Services out of which the claim arose.

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

10. SOFTWARE - Not applicable to this Agreement

11. Intentionally Not Used

12. TERMINATION

12.1 Termination for Default If the Contractor fails to fulfill its obligation under this Master Agreement, properly and on time, or otherwise violates any provision of the Master Agreement, USM may terminate the Master Agreement by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. USM will provide Contractor a reasonable opportunity, not to exceed ten (10) business days, unless another duration is provided in the notice, to cure the act or omission, provided such opportunity to cure does not extend the deadline for any deliverables and does not cause USM further damage. All finished or unfinished Deliverables associated with the Master Agreement provided by the Contractor shall, at USM’s option, become the USM’s property. USM shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination of the Master Agreement, less the amount of damages caused by Contractor’s breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and USM can affirmatively collect damages. Termination of the Master Agreement hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

The USM Institution may also terminate for default any Task Order/SOW/PO done under this Agreement in accordance with this Section 12.1. All finished or unfinished Deliverables associated with a specific Task Order/SOW/PO provided by the Contractor to a USM Institution shall, at the USM Institution’s option, become the USM Institution’s property. The USM Institution shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination of the Task Order/SOW/PO, less the amount of damages caused by Contractor’s breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the USM Institution can affirmatively collect damages. Unless stated otherwise in a TOC/SOW/PO, termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures

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

The USM Institution may, with reasonable delivery of prior written notice, also terminate for convenience any Task Order/SOW/PO done under this Agreement in accordance with this Section 12.2. The notice shall specify the extent to which the performance of work under the Task Order/SOW/PO is terminated and the time when such termination becomes effective. The USM Institution will pay all reasonable costs associated with the termination of a TOC/SOW/PO. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of Termination. Unless stated otherwise in the TOC/SOW/PO, termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of the USM Procurement Policies and Procedures. This clause 12.2 does not apply to managed services or hosting services procured by a USM Institution as these services will be governed by the provisions in the hosting agreement as negotiated between the Contractor and the USM Institution.

13. **Americans with Disabilities Act**

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

14. **Non-Visual Access**

Where applicable, the following will apply to TORPs:

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

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

15. **Non-Discrimination in Employment**

During the performance of this Master 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, pregnancy, ancestry,
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, pregnancy, ancestry, 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 University of Maryland Baltimore County (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.

16. MISCELLANEOUS TERMS

16.1 Publicity/Use of Name and Logo

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

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

C. Any violation of this Section 16.1 will be considered a material breach of this Master Agreement and grounds for its immediate termination in USM’s sole discretion. Any violation of this Section 16.1 will be considered a material breach of any Task Order Agreement/SOW/Purchase Order entered into be a USM Institution and grounds for the immediate termination of a TOC/SOW/PO at the USM Institution’s sole discretion.

16.2 Notices

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

If to USM:        Procurement Officer
                 UMBC
                 Department of Procurement and Strategic Sourcing
                 Administration Building, 7th Floor
If to Contractor:

Notices related to a specific TOC/SOW/PO would be as directed by the USM Institution.

16.3 Delays and Extension of Time

Contractor agrees to prosecute the Work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the Work specified in this Agreement. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to, acts of God, acts of public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of the Agreement with the State or USM, or a TOC/SOW/PO with a USM Institution, changes in law or regulation, action by government or other competent authority, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, malicious or criminal acts of third parties, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either Contractor or the subcontractors or suppliers. If Contractor is unable to perform its obligations under this Agreement, or any TOC/SOW/PO, whichever is applicable, for ten (10) business days, unless another time duration is mutually agreed, due to a Force Majeure, then USM may terminate this Agreement upon written notice, or the USM Institution may terminate a TOC/SOW/PO, whichever is applicable. Termination will occur according to Section 12 of this Agreement.

16.4 Suspension of Work:

The Procurement Officer for the Agreement, or in the case of a TOC/SOW/PO, the Procurement Officer of the applicable USM Institution, may unilaterally order Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the USM or the USM Institution. Such suspension, delay or interruption may be subject to applicable fees and expenses incurred by the Contractor. Such fees and expenses, if any, will be subject to negotiation between the USM or the USM Institution (as applicable) and the Contractor. If the work is suspended by USM or a USM Institution, as may be applicable, Contractor may be permitted to replace its Key Personnel, permission for which will not be unreasonably withheld, in accordance with Section 1.5 of this Agreement.

16.5 No Waiver

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

16.6 Dispute Resolution

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

B. Unless another Disputes process is outlined by the USM Institution, if the Parties are unable to resolve the dispute within thirty (30) days after referral to them, the Disputes process outlined below will be followed:

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

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

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

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

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

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

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

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

16.7 Retention of Records

Contractor shall retain and maintain all records and documents relating to this Agreement for three years (unless a longer period of time is required by a USM Institution) after the expiration/termination of the Agreement, and final payment by USM Institutions for all TOC/SOW/PO’s done under the Agreement, and will make them available for inspection and audit by authorized representatives of the USM, its USM Institutions, or State of Maryland, including the Procurement Officer or designee, at all reasonable times. Compliance with this provision by Contractor shall not be deemed a breach of any confidentiality obligations provided for herein.
16.8 Non-Hiring of Officials and Employees

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

16.9 Contingent Fee Prohibition

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

16.10 Financial Disclosure

Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate $200,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches $200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

16.11 Political Contribution Disclosure

Contractor shall comply with Election Law Article Sections 14-101 through 14-108 of the Annotated Code of Maryland, which requires that every person making contracts with one or more governmental entities during any 12 month period of time involving cumulative consideration in the aggregate of $200,000 or more to file with the State Board of Elections a statement disclosing certain campaign or election contributions.

16.12 Anti-Bribery

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

16.13 Ethics

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

16.14 Multi-Year Contracts Contingent Upon Appropriations

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

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

16.15 Pre-Existing Policies

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

16.16 Survival After Expiration or Termination

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

A. Ownership and Proprietary Rights, Section 5 (and Exhibit ___, if applicable)
B. Proprietary and Confidential Information, Section 6 (and Exhibit ___, if applicable)
C. Representations and Warranties, Section 7
D. Indemnification, Section 9
E. Limitation of Liability, Section 11

16.17 Maryland Law Prevails

The laws of the State of Maryland shall govern the interpretation and enforcement of this Agreement. Following exhaustion of 16.6 Disputes Resolution procedures, any subsequent legal actions arising under this Agreement will be instituted only in the courts of the State of Maryland. As specifically provided by MARYLAND ANNOTATED CODE, SECTION 21-104, the parties agree that computer software purchases made under this agreement shall not be governed by the Uniform Computer Information Transactions Act (UCITA) as adopted in Maryland under Title 21 of the Commercial Law article of the Maryland Annotated Code, as amended from time to time. This agreement shall be governed by the common law of Maryland relating to written agreements, as well as other statutory provisions, other than UCITA, which may apply, and shall be interpreted and enforced as if UCITA had never been adopted in Maryland.

16.18 Severability

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

16.19 Section Headings

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

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

16.21 Subcontracting and Assignment

A. Except as explicitly set forth in this Agreement, Contractor may not subcontract any portion of the Services provided under this Agreement or any Task Order Contract without obtaining the prior written approval of the USM or USM Institution, whichever is applicable, if requested, subcontractors are to be identified in the Task Order Proposal submitted to the USM Institution in response to a TORP. Such written approval will be in the form of a modification to this Agreement or included in a Task Order Contract, whichever is applicable. The USM or a USM Institution shall not be responsible for the fulfillment of Contractor’s obligations to subcontractors. Any such subcontract shall be subject to any terms and conditions that USM or the USM Institution deems necessary to protect its interests. Contractor shall remain responsible for performance of all Services under this Agreement or any Task Order Contract and shall be subject to liability to USM or the USM Institution for acts and omissions of subcontractors to the same extent that the Contractor would be liable hereunder to the USM or a USM Institution.

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

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

16.22 No Third Party Beneficiaries

This Agreement is only for the benefit of the undersigned parties and their permitted successors and assigns. Except as provided in 16.21.B of this Agreement, no one shall be deemed to be a third party beneficiary of this Agreement.

16.23 Contract Integration and Modification

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

Each party is acting as an independent contractor and not as employee, agent, partner, or joint venture with the other party for any purpose. Except as provided in this Agreement, neither party will have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other. Nothing in this Agreement is intended to create a joint employment relationship.

16.25 Business Continuity Plan

Contractor represents and warrants that it currently has certain business continuity plans in place throughout its organization including but not limited to, its hosting facilities, that will be used in case of a disaster or other event that could result in the interruption of Contractor’s capability to perform its obligations to USM under this Agreement. Contractor agrees that its plans include reasonably prudent back-up business resumption and disaster recovery; that it continually maintains its business continuity plans so that they remain current. In addition to Contractor’s obligations in Section 7.3, Contractor further agrees to inform USM promptly in the event it suffers a disaster or business interruption. Contractor acknowledges that USM, at its option, may regard Contractor’s failure to comply with the requirements in this Section as a material breach of this Agreement, and that, in such event, USM may pursue all available legal remedies, including injunctive and other damages.

16.26 Prohibition on Gifts and Gratuities

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

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

16.28 Timely Performance. For all those sections of this Agreement or any TOC/SOW/PO where a number of days or time frame is required, Contractor shall use diligent efforts to meet such timeframe. Contractor and the USM Institution acknowledge, however, that the services under a TOC/SOW/PO may be joint and iterative, such that delay by one party in complying with its obligations may affect the other party’s ability to meet any agreed upon schedule. If and to the extent the delay by one party is caused by delay by the other party, such delay will not violate this provision.

16.29 Sex Offender Requirement
Maryland Annotated Code, Criminal Procedure Article, §11-704 requires certain sex offenders to register with the local law enforcement agency. Maryland Annotated Code §11-709 requires local
law enforcement to child care centers when a Registered Sex Offender is residing or working in the area. Many USM Institutions host child care centers on their property.

As a Contractor working for a USM Institution that may host a child care center, Contractors are prohibited from employing Registered Sex Offenders to work on projects for a USM Institution if they, as a result, are required to be present on the property of the USM Institution.

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

The Contractor shall submit to USM Institution a listing of any employees assigned to perform under this Master Agreement and certify that the necessary criminal history records checks have been conducted and that employee complies with the requirements.

16.30 Force Majeure. If Contractor’s, USM’s, or any USM’s Institution’s performance(s) hereunder is rendered impossible, hazardous, or is otherwise prevented, impaired, or delayed due to sickness, inability to perform, accident, interruption or failure of means of transportation, Act(s) of God, riot, strike, labor difficulty, war (including civil war), embargo, epidemic, pandemic, evacuation, fire, flood, explosion, earthquake, quarantine restriction, any act or order of any civil or military authority, acts of any government, acts of governing 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. USM, or USM Institution, shall promptly notify the Contractor, giving the details of the force majeure or exigency circumstance, and the Master Agreement, or TOC, SOW, or PO, shall be suspended during but not longer than the continuance of the force majeure or exigency unless the circumstances are of such a magnitude that termination is warranted in the sole discretion of the USM or USM Institution. In the event of force majeure or exigency, the USM or USM Institution shall not be responsible for any damages sustained by the Contractor; however, the Contractor shall be entitled to a refund of any sums already paid less any expenses incurred by the USM or USM Institution up to the occurrence of the circumstances. Neither the USM, nor USM Institution, takes any responsibility for the success or failure of any Master Agreement with the USM.

16.31 COVID-19: The Contractor and USM acknowledge and agree that the parties are entering into this Master Agreement at a time when COVID-19 has disrupted and caused the termination or cancellation of many contracted services. The parties also acknowledge and agree that, while the COVID-19 response and evolution of impact(s) is current and ongoing, COVID-19 is a Force Majeure event, as defined above, and, with the knowledge that COVID-19 will continue to be a Force Majeure event for purposes of this Master Agreement, notwithstanding, the parties wish to enter into this Master Agreement with full knowledge and agreement that this Master Agreement may be terminated under the Force Majeure paragraph above. Contractor and USM agree the USM and USM Institutions shall not be responsible for any damages sustained by the Contractor; however, the Contractor shall be entitled to a refund of any sums already paid less any expenses incurred by the USM or USM Institution up to the occurrence of the circumstances. Neither the USM, nor USM Institutions, takes any responsibility for the success or failure Master Agreement with the USM.
16.32 **WAIVER OF JURY**: CONTRACTOR AND USM 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 MASTER AGREEMENT. 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 CONTRACTOR AND USM, 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.

16.33 The Contractor and USM agree that the terms of this Contract were mutually negotiated and shall not be construed either in favor or against either of them by virtue of the extent of the Parties’ involvement in preparing or reviewing this Contract.

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

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

UMBC on behalf of UNIVERSITY SYSTEM OF MARYLAND

Contractor: ___________________________

By: _________________________________  By: _________________________________

Name: _______________________________  Name: _______________________________

Title: ________________________________  Title: ________________________________

_______________________________
Exhibit A
Implementation Process

Generally, the USM Institution will follow this process, although the USM Institution may adapt this process to meet its specific needs and/or requirements.

1. Task Order Request for Proposal (TORP) Process: The TORP process will generally be handled as follows:

A. Scope of Work and Proposals: As the need for ERM and/or Crisis Management Consulting Services arises, the USM Institution will contact a minimum of two, although more is preferable, Master Contractors (if available) in the applicable ERM/CM category. However, at its sole discretion, the USM Institution may contact a single Master Contractor if it is determined by the USM Institution to be in its best interest. The USM Institution organization will provide an appropriate staff person to serve as the USM Institution’s point of contact:

   (1) Written scope of work for the requested services inclusive (at a minimum) of:
      a. High level functional requirements or business issue to be resolved;
      b. Required schedule for the start and completion of the engagement; and,
      c. A detailed Statement of Work or a business issue/problem;

   (2) The USM Institution, in collaboration with its applicable Risk Management or Crisis Management group, will develop a written TORP that may require the following technical/qualifications and price criteria to be addressed by the Master Contractors:
      a. Methodologies to be utilized to provide the requested Service(s) required with qualifications; recommended project management/work plan that may include may include, but is not limited to: specific deliverables and timelines for their successful completion; criteria for evaluation and acceptance of key milestones; communication plans; risk assessments and risk mitigation plans as applicable; as well any other project activities that may be specifically required in the TORP document.
      b. Staffing Plan for providing the required services. Such plan may include, but is not limited to, the executive management, project management, technical and business consultants, etc., and summary of the proposed staffs’ expertise. If requested, references of similar projects are to be provided for the proposed staff so that the USM Institution may, if it so chooses, check references of the proposed staff.
      c. Similar firm experience with other educational customers/clients including contact information so that the USM Institution may, if it so chooses, check references.
      d. Utilization of Subcontractors, if any, that are proposed to provide some of the required services. If subcontractors will provide some or all of the required services, the USM Institution may request references of the subcontractors; past working relationships with the Master Contractor; firm experience, MBE status/allocation, etc. to be provided for the subcontractor.
      e. A schedule of tasks and level of effort to ensure that the required time frame to complete the work in accordance with the USM Institution’s scope,
f. If a task order includes subcontracting of services by the ERM/CM consultant, an MBE subcontracting goal may be established by the USM Institution with a statement indicating the MBE percentage commitment for the project (Note: Contractors are encouraged to seek Maryland State Certified MBE’s to participate in the resulting Task Orders.) If an MBE goal is set for a specific TORP, MBE Forms will be required to be completed and submitted as specified in the TORP, and,

g. Quoted price which may be: a) lump sum fee; b) not-to-exceed price for the services (dependent on the requirements within USM Institution’s scope of services); or c) time and material estimate. The USM Institution will request a breakdown of the quoted price by staff position, task hours for each staff person, and billable hourly rate (Master Contractors are required to apply the quoted maximum or better hourly rates for the proposed staff as established and specified in their Master Contract with USM.)

Note: In addition to the information noted above, the USM Institution reserves the right to request additional information from the Master Contractors as it deems appropriate for the scope of services. In such instances, this request will be included in the TORP issued by the USM Institution.

(3) The USM Institution may conduct a pre-proposal meeting, if applicable, with the invited awarded Master Contractors.

a. The Master Contractors will provide to the USM Institution’s designated staff person a Task Order Proposal (‘TOP’) for the requested services that addresses the specified technical and price criteria.

b. **Evaluation of TOPs:** The evaluation criteria and evaluation process is solely at the USM Institution’s discretion and will be included in the requirements and/or scope of work for the related Task Order Request for Proposal (TORP) issued by the USM Institution. The USM Institution will establish an Evaluation and Selection Committee (“Committee”) that will be responsible for the review and evaluation of the Task Order Proposal responses received. The USM Institution will evaluate the Task Order Proposals for, but not limited to, cost advantage, proposed assigned key personnel’s expertise and time commitment, firm experience and expertise, references of the firm and/or key personnel, MBE commitment, ability to meet the required schedule, ability to provide the scope of services, etc.

As part of the evaluation, the Committee may request interviews of proposed Master Contractor team members and/or discussions with the Master Contractors.

Following the evaluation of the proposal, including any applicable interviews and/or discussions, an award will be made by the USM Institution to the Master Contractor(s) with the most advantageous proposal. The award will be based in accordance with the TORP and may be based:

i. solely on price with the lowest responsive and responsible cost receiving the award;

ii. on a combination of technical and price evaluation/ranking, or

iii. solely on technical expertise, followed by the USM Institution negotiating a fee with the top ranked Contractor. In the event of unsuccessful
negotiations, the USM Institution may discontinue negotiations with the top ranked firm and proceed to the next rank, and so forth.

c. **Award of a Task Order:** Dependent upon the Services to be provided or the nature of the assignment/engagement, a Task Order Contract (TOC) and Purchase Order (P.O.), or solely a Purchase Order will be issued by the USM Institution to the successful Master Contractor for each specific task order. The business terms and conditions of the Master Contract will apply unless specifically revised, at the USM Institution’s sole discretion, for a specific Task Order Contract.

The Master Contractor will be expected to provide leadership and supervision for its consultants assigned to a resulting TOC engagement while collaborating with a designated USM Institution point of contact.