

APPENDIX C-1

Software Services Agreement

UNIVERSITY OF MARYLAND GLOBAL CAMPUS

SOFTWARE SERVICES AGREEMENT #

DATE: _____

CONTRACTOR:
Federal Employer ID:
Address:

Contact Person:
Contact Phone:
Contact Email:

UMGC Ordering Office:
Name and Email:
UMGC CIRT:

THIS AGREEMENT ("Agreement") is made as of this ____ day of ____, 202__ by and between _____, a corporation organized under the laws of the State of _____, with offices at _____, _____, _____, hereinafter referred to as "Contractor", and the UNIVERSITY OF MARYLAND GLOBAL CAMPUS (UMGC), a constituent institution of the University System of Maryland, an agency of the State of Maryland, with offices at 3501 University Boulevard East, Adelphi, MD 20783, hereinafter referred to as the "University".

RECITALS

The University issued solicitation documents (RFP # _____) on _____, _____, 20____, or, absent a solicitation document, requested in writing, as amended from time to time (the "Solicitation"), to solicit a provider of _____ services. Contractor submitted a Technical Proposal dated _____ 20____ and Price Proposal dated _____, 20____, and accepted by the University ("collectively Proposal") in response to the Solicitation, and the University subsequently selected the Contractor as the awardee of this Agreement. This Contract is subject to Section 2-901, Md. State Fin and Proc. Code Ann.

THE PARTIES AGREE AS FOLLOWS:

1. Nature of the Agreement, Term, and Order of Precedence.

1.1. This Agreement is effective as of the date signed by UMGC and will remain in effect if there is at least one statement of work ("SOW") or order form ("Order Form") in effect.

1.2. The term for the SOW or Order Form set forth in Exhibit A shall commence on _____ and continue through _____ ("Initial Term"). Following the Initial Term, UMGC may, but is not required to, elect to renew the SOW or Order Form, unless otherwise extended or terminated as provided in this Agreement or as a matter of law.

1.3. The pricing for the SOW or Order Form shall not exceed the rates set forth in _____.

1.4. This Agreement shall consist of the following documents (including any materials made part thereof), stated in the order of precedence:

- A. Amendment(s) to the Agreement;
- B. This Agreement Form (pages 1 through 24);
- C. Exhibit A: (Statement of Work or Order Form);
- D. The Solicitation #_____ and all amendments to the Solicitation;
- E. Contractor's Technical Proposal dated _____ and Price Proposal dated _____.

2. DEFINITIONS.

2.1. "Materials" means any and all software, Source Code, technology, plans, research, products, 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. “UMGC Materials” means those Materials owned by UMGC and supplied to Contractor by or for UMGC in connection with the Services that may be required for Work and the Deliverables. UMGC 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 by Contractor which may be supplied by Contractor and/or licensed to UMGC in connection with the Services, Work and Deliverables.

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

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

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

2.7. “Services” means licenses, support services, implementation services, onboarding, integration services and any other services to be provided pursuant to this Agreement and each Order Form. For the avoidance of doubt, “Services” may not include any new or upgraded technology that may be developed and offered after the date of the applicable Order Form, unless otherwise agreed to in writing by the Parties.

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

2.9. “Work” means any and all products and/or services required within a Statement of Work and/or Order Form, as well as the documentation, research, notes, data, computations, estimates, reports or other documents or work product related to such deliverables including development activities created by or produced by Contractor for UMGC under this Agreement. It is agreed that Work shall not include Contractor-Owned Materials.

2.10. “Day” or “day” means a calendar day unless otherwise specified.

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

2.12. “Purchase Order”: Purchase Order as used throughout this Agreement includes Purchase Orders issued by UMGC that may contain preprinted PO Terms and Conditions. The preprinted Terms and Conditions will not supersede the terms and conditions in this Agreement.

2.13. “Information” means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

2.14. “Data” means element(s) of Information in the form of facts, such as numbers, words, names, or descriptions of things from which “understandable information” can be derived.

2.15. “Personally Identifiable Information” or “PII” means an individual’s first name and last name, personal mark, or unique biometric or genetic print or image, in combination with one or more of the following data elements:

- A. A social security number;
- B. A driver's license number, state identification card number, or other individual identification number issued by a state government unit;
- C. A passport number or other identification number issued by the United States government;
- D. An Individual Taxpayer Identification Number; or
- E. A financial or other account number, a credit card number, or a debit card number that, in combination with any required security code, access code, or password, would permit access to an individual's account.

2.16. “Personal Information” means any Information relating to an identified or identifiable natural person, including but not limited to Personally Identifiable Information (PII). An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2.17. “Data Subject” means a natural person who is identified, or can be identified, by reference to their Personal Information.

2.18. “Processing/Processes/Processed” means any operation or set of operations which is performed on Information, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

2.19. “Processor” means the entity that Processes Personal Information on behalf of the Controller.

2.20. “Controller” means the entity that determines the purposes and means of the Processing of Personal Information.

3. Omitted.

4. PAYMENT TERMS.

4.1. Payment will be made in accordance with the terms and conditions set forth in this Agreement. Contractor’s fees shall not exceed the fees set forth in each SOW or Order Form. The basis for Contractor’s pricing in each SOW or Order Form shall comport with the rates set forth in the Contractor’s Price Proposal dated _____.

4.2. Invoicing.

- A. Payment requests (invoices) shall be submitted electronically to the Accounts Payable Department at accountspayable@umgc.edu. The invoice must be in US Dollars to UMGC and must contain the following information: state "Invoice" on the bill; reference the date indicated; type of billing (i.e., the deliverable); the Federal Employer's ID Number or Social Security Number; the University’s Purchase Order Number, and additional information as may be specifically required elsewhere in this Agreement.
- B. Payments to Contractor pursuant to this Agreement shall be made no later than 30 days after UMGC’s receipt of a proper invoice from Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.
- C. Contractor hereby agrees that, notwithstanding the provisions of State Finance and Procurement Article of the Annotated Code of Maryland, Title 15, Subtitle 1, interest on any payments due under the terms of this Agreement shall not be payable unless such payments remain unpaid for more than forty-five (45) days after receipt of a proper invoice and such payments shall accrue interest from the 31st day after receipt of a proper invoice.

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

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. UMGC owns and retains all right, title and interest in UMGC’s Owned Materials. UMGC Students own and retain

all right, title and interest in UMGC Student-Owned Material. UMGC 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. UMGC also acknowledges and agrees that in entering into this Agreement, UMGC acquires no ownership rights in Contractor-Owned Materials. UMGC 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 UMGC owned Materials or the Student-Owned Materials; or anything that is provided to Contractor by UMGC, including but not limited to business processes, software and related documentation. Any modifications or enhancements to the UMGC Owned Materials or the Student-Owned Materials including those suggested or implemented by Contractor, shall belong to UMGC. Contractor agrees that its rights to use any such materials or data provided by UMGC, including all UMGC-owned Materials is limited to such use as is necessary to permit Contractor to perform Services and obligations in this Agreement.

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

5.3. Contractor agrees to indemnify and hold harmless, and defend upon request UMGC, its officers, agents and employees with respect to any claim, action, cost or liability or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, software, supplies, equipment or services under this Agreement and for a violation or breach of the provisions set forth in Sections 5 and 6 of this Agreement.

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

5.5. Upon UMGC's request or upon the expiration or termination of this Agreement, Contractor shall deliver or return all copies of the Work to UMGC. Contractor is permitted, subject to its obligations of confidentiality, to retain one copy of the Work for archival purposes and to defend its work product.

5.6. Contractor and UMGC intend this Agreement to be a contract for services and each considers any tangible work products identified as Deliverables ("Deliverables") during the Term or Terms of this Agreement to be a work made for hire. If for any reasons the Deliverables would not be considered a work made for hire under applicable law, Contractor does hereby sell, assign and transfer to UMGC, 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 UMGC may deem necessary to secure for UMGC the rights in the Deliverables.

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

5.8. UMGC recognizes that Contractor’s business depends substantially upon the accumulation of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops in its engagements. UMGC’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 UMGC, then Contractor will own such material including, without limitation: methodologies; delivery strategies, approaches and practices; generic software tools, routines, and components; generic content, research and background materials; training materials; application building blocks; templates; analytical models; project tools; development tools; inventions; solutions and descriptions thereof; ideas; and know-how (collectively “Know-how”) developed by Contractor and UMGC will own the Know-how developed by UMGC. To the extent such Know-how is contained or reflected in the Work Product, each party hereby grants the other a fully paid up, perpetual license to use such Know-how. Neither party will sublicense or sell Know-How of the other party to any third party, and will not use or exploit the Know-How of the other party to compete with the information technology and professional services of Contractor or the educational services and delivery of UMGC.

6. PROPRIETARY AND CONFIDENTIAL INFORMATION.

6.1. Contractor acknowledges and understands that in connection with this Agreement, the performance of any Statement of Work or Order Form, and otherwise, Contractor has had or shall have access to, has obtained or shall obtain, or has been or shall be given UMGC’s Confidential Information (as defined herein). For purposes of this Agreement, “Confidential Information” means all information provided by UMGC, or UMGC Students to Contractor, including without limitation information concerning the UMGC’s business strategies, political and legislative affairs, students, employees, vendors, contractors, student records, customer lists, finances, properties, methods of operation, computer and telecommunications systems, software and documentation, student materials, student name and other identifying information which is generated by the student, such as biometrics. Confidential Information includes information in any and all formats and media, including without limitation oral, and includes the originals and any and all copies and derivatives of such information.

6.2. Contractor shall use the Confidential Information only if and when required for the performance of

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

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

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

6.5. Contractor may disclose Confidential Information as required by legal process. If Contractor is required by legal process to disclose Confidential Information, Contractor shall immediately notify UMGC, and before disclosing such information shall allow UMGC 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 UMGC 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:

University of Maryland Global Campus
Attn: Office of Legal Affairs
3501 University Blvd East
Adelphi, MD 20783

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 UMGC agree in writing to disclose. Each party shall be deemed to have met its nondisclosure obligations under this section as long as it exercises the same level of care to protect the other's information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement.

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

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

6.12. UMGC will implement security measures at its offices and all other associated facilities to ensure the confidentiality of Contractor's confidential information and materials in manner like that provided by UMGC for its own information and materials identified as confidential under this Agreement. Unless otherwise provided by separate agreement, upon termination of this Agreement, UMGC shall return to Contractor all Contractor-Owned Materials, including software, Source Code, and/or documentation provided to UMGC by Contractor; alternatively and at Contractor's option, UMGC shall destroy any or all of the aforementioned beyond recoverability. UMGC 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. Contractor will notify UMGC as soon as commercially practical of any actual or suspected breach of security with respect to Confidential Information. Contractor will notify UMGC as soon as commercially practical of any unusual circumstances, including but not limited to Contractor-based technical problems, power outage affecting authentication, suspicion concerning identity of person logging on, Contractor or Contractor's subcontractor system intrusions (e.g., attack by hacking, virus infection). Notifications to be

made under this Section shall be made in the most expeditious manner possible (telephone with e-mail confirmation is preferred) to the appropriate project manager or other contact as may be agreed.

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

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

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:

7.2.1. Contractor 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; and,

7.2.2. Contractor 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; and,

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

7.2.4. To the extent that personal data is disclosed, Contractor shall comply with all international, federal, state, and local data privacy laws, regulations and ordinances including but not limited to the European Union General Data Protection Regulation 2016/679 (hereinafter referred to as "GDPR"). Compliance with Article 26 of GDPR may require Contractor to agree to the standard contractual clauses adopted by the EU Commission; and,

7.2.5. Contractor 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. Software. Contractor hereby warrants and represents that:

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

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

7.3.3. Contractor has used industry standards for vulnerability testing and software quality code reviews to ensure that 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).

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

7.4. Security, Data Privacy, and Protection.

7.4.1. Data Breach: Contractor shall report any confirmed or suspected breach of any UMGC Data to UMGC's Computer Incident Response Team (CIRT) at CIRT@umgc.edu within seventy-two (72) hours of discovery or detection. Contractor shall cooperate with UMGC and take reasonable commercial steps in the investigation, mitigation, and remediation of each confirmed or potential breach.

7.4.2. Contractor shall comply with the IT Security Policy available at <https://www.umgc.edu/administration/policies-and-reporting/policies/info-governance-security-technology/information-security> and endorse UMGC's requirement to adhere to UMGC's Information Governance, Security and Technology policies (<https://www.umgc.edu/administration/policies-and-reporting/policies/info-governance-security-technology>). Contractor shall provide answers to questionnaires necessary for UMGC to assess risks, ensure data integrity, and determine the level of accessibility that must be maintained. Specific assessment items to include:

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

7.4.3. Contractor shall establish and maintain:

- A. Industry standard technical and organizational measures to help to protect against accidental damage to, or destruction, loss, or alteration of the materials;
- B. Industry standard technical and organizational measures to help to protect against unauthorized access to the services and materials; and
- C. Network and internet security procedures, protocols, security gateways and firewalls with respect to the services.

7.4.4. Contractor software and its components shall be 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.

7.4.5. Contractor shall follow strong identity management characteristics and practices, requiring users to adhere to organizational usage, construction, and change requirements.

7.4.6. Contractor shall configure and maintain network to be suitably hardened against security threats and ensure adequate performance.

7.4.7. On an annual basis or as requested, Contractor shall promptly provide a Service Organization Control (SOC) 2 Type 2 report, or equivalent, ("Report") for all services and facilities from which the services are provided. It is Contractor's responsibility that such Report is provided under the terms and conditions of this Agreement without UMGC being required to agree to additional terms and conditions that may be applied by a third party. If a Report states that a facility has failed to materially satisfy one or more control objectives, Contractor will, as UMGC's sole remedy, use commercially reasonable efforts to cause the facility to materially satisfy all control objectives. If, despite Contractor's efforts, the facility cannot materially satisfy all relevant control objectives, Contractor will mitigate the issue in a commercially reasonable manner which may include the migration to an alternate facility which materially satisfies all control objectives.

7.4.8. UMGC or an appointed audit firm has the right to audit Contractor for the processing, transport, or storage of UMGC Data. Audits will be at UMGC's sole expense which includes operational charges by Contractor. In lieu of UMGC or its appointed audit firm performing their own audit, if Contractor has an external audit firm that performs a review, UMGC has the right to review the controls tested as well as the results and has the right to request additional controls to be added to the certified report for testing the controls that have an impact on its data.

7.4.9. Record Retention.

- A. During the Term and for five (5) years thereafter, each party shall maintain accurate records and books of account relating to UMGC Data.
- B. Deletion or Return of Data. Upon the expiration of the five years term mentioned in 7.4.9.A., above, the Contractor shall, promptly upon the written request of UMGC: (a) return a complete copy of all UMGC Data to UMGC by secure file transfer in such format as is agreed by the parties; and (b) delete and procure the deletion of all other copies of UMGC Data processed by any contracted Processor.
- C. Each party may retain Data as permitted by applicable law, as anonymized, aggregated data for internal purposes related to the improvement of services generally, and otherwise, each party may retain Data to the extent required by applicable laws and only to the extent and for such period as required by applicable laws.

7.4.10. Data Subject Rights.

- A. Contractor shall implement commercially reasonable technical and organizational measures, insofar as this is reasonably possible, for the fulfillment of UMGC's obligations, as mutually agreed by the parties, to respond to requests by Data Subjects to exercise rights under any applicable laws.
- B. Contractor shall:
 - I. notify UMGC within twenty-four (24) hours at the designated email address

- (CIRT@umgc.edu) and/or phone number if Contractor receives a request from a Data Subject under any applicable law in respect of UMGC Data; and
- II. respond to that request as instructed by UMGC or as required by applicable laws to which Contractor is subject, in which case Contractor shall to the extent permitted by applicable laws inform UMGC of that legal requirement before it responds to the request.

8. INSURANCE.

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

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

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

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

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

9. INDEMNIFICATION.

9.1. In addition to the obligations to indemnify set forth elsewhere in the Agreement, Contractor will indemnify and hold harmless UMGC its employees, contractors, and agents, from any and all loss, damage, injury, or liability arising directly out of Contractor's operations under this Agreement, including operation

of equipment or vehicles, and wrongful or tortuous acts of omission, commission, or negligence by Contractor, its employees, contractors, or agents when engaged in company operations under this Agreement, and including the disclosure of user personally identifiable data, either during the term of this Agreement or at any time thereafter, if such disclosure occurred as a result of negligence by Contractor, its employees, contractors, or agents, and provided that UMGC: (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 UMGC settle any such claim without Contractor's prior written approval.

9.2. Contractor will defend and indemnify UMGC, or settle any suit, claim or proceeding for which the cause of action accrued during the term of the Agreement (collectively, a "Claim") brought against UMGC alleging that Contractor software infringes any U.S. patent, copyright, trademark, or other proprietary right, and shall pay any final judgment against UMGC, including all court awarded costs, damages and expenses, which result from any such claim, provided that UMGC: (a) notifies Contractor promptly in writing of any such claim or proceeding, and (b) reasonably cooperates with Contractor in defending any such claim or proceeding.

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

9.4. UMGC 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.

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

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

11. LIMITATION OF LIABILITY. NEITHER UMGC NOR CONTRACTOR SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, AND LOSS OF GOODWILL, WHETHER IN AGREEMENT OR IN TORT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS PROVIDED FOR IN SECTIONS "6. PROPRIETARY AND CONFIDENTIAL INFORMATION" AND "SUBSECTIONS 9.2 AND 9.3 OF SECTION 9. INDEMNIFICATION" OF THIS AGREEMENT, CONTRACTOR'S LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY UMGC UNDER THIS AGREEMENT DURING THE TERM OF THIS AGREEMENT OR \$500,000, WHICHEVER IS GREATER.

12. TERMINATION.

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

12.2. Termination for Convenience. The performance of work under this Agreement may be terminated by UMGC, in accordance with this clause in whole, or from time to time in part, whenever UMGC shall determine that such termination is in the best interest of UMGC. UMGC will pay all reasonable costs associated with this Agreement that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. In the event that UMGC terminates under this provision, UMGC and Contractor agree that Contractor is entitled to retain the balance of the prepaid annual license fee or one year of any prepaid annual license fee, whichever is less, as reasonable costs associated with the termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of the USM Procurement Policies and Procedures.

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

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

15. Non-Visual Access Clause. The Contractor warrants that the information technology offered under this agreement (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual 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 nonvisual access. The Contractor further warrants that the costs, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 5 percent.

For purposes of this section, the phrase “equivalent access” means that the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

16. Accessibility. Contractor hereby warrants that the products and/or services to be provided under this Agreement comply with applicable University standards, including Web Content Accessibility Guidelines 2.0, Level AA (WCAG 2.0-AA), Section 508 Standards for Electronic and Information Technology and/or the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.1, as applicable. Contractor agrees to: (1) provide the University with its accessibility testing results and written documentation verifying accessibility, such as a Voluntary Product Accessibility Template ("VPAT"), upon request; (2) promptly respond to and resolve accessibility complaints; and (3) indemnify and hold the University harmless in the event of claims arising from inaccessibility.

17. MISCELLANEOUS TERMS.

17.1. Publicity/Use of Name and Logo.

- A. Contractor is authorized to identify UMGC as a party to this Agreement for the purpose of identifying UMGC as a customer to potential customers. However, any other use of UMGC’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 UMGC.
- B. Intentionally Omitted.
- C. This Agreement does not include a trademark license. Except as allowed by law for limited informational purposes, UMGC grants no rights to use any of its trademarks or service marks, for any purpose, without the prior and explicit written permission of UMGC. Under no circumstances does UMGC grant the right to use its corporate logos or signature except in connection with the products or services that are the subject matter of this Agreement or any related products or services.
- D. Any violation of this Section 17.1 will be considered a material breach of this Agreement and grounds for its immediate termination in UMGC’s sole discretion.

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

For the University: University of Maryland Global Campus
3501 University Boulevard East
Attention: Procurement Office
Adelphi, Maryland 20783

For the Contractor:

17.3. Delays and Extension of Time. Contractor agrees to prosecute the Work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the Work specified in this Agreement. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to, acts of God, acts of public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of an Agreement with the State or UMGC, changes in law or regulation, action by government or other competent authority, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, malicious or criminal acts of third parties, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either Contractor or the subcontractors or suppliers. If Contractor is unable to perform its obligations under this Agreement for ten (10) days, unless another time duration is mutually agreed, due to a Force Majeure, then UMGC may terminate this Agreement. Termination will occur according to Section 14 of this Agreement.

17.4. Suspension of Work. The Procurement Officer of UMGC unilaterally may order Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the UMGC. 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 UMGC and the Contractor

17.5. 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.

17.6. Dispute Resolution. This Agreement shall be subject to the USM Procurement Policies and Procedures. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Agreement in accordance with the procurement officer's decision.

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

17.8. Non-Hiring of Employees. No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof, except that this section does not limit Contractor when it recruits for positions in general advertisements not directed at the Maryland employees.

17.9. 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.

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

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

17.12. 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.

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

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

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

17.16. 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
- B. Proprietary and Confidential Information, Section 6
- C. Representations and Warranties, Section 7
- D. Indemnification, Section 9
- E. Limitation of Liability, Section 11
- F. Exhibit D, Data Protection Addendum

17.17. Maryland Law Prevails. The laws of the State of Maryland shall govern the interpretation and enforcement of this Agreement. Following exhaustion of 17.6 Dispute 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, CL, 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.

17.18. 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.

17.19. 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.

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

17.21. Subcontracting and Assignment.

- A. Except as explicitly set forth in this Agreement, Contractor may not subcontract any portion of the Services provided under this Agreement without obtaining the prior written approval of the UMGC, whichever is applicable, nor may Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of UMGC. Such written approval will be in the form of a modification to this Agreement. UMGC 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 UMGC deems necessary to protect its interests. Contractor shall remain responsible for performance of all Services under this Agreement and shall be subject to liability to UMGC for acts and omissions of subcontractors.
- B. Contractor agrees that all Services provided by Contractor under this Agreement including any amendment(s) to this Agreement will be performed by employees or consultants or subcontractors of Contractor who have executed work-for-hire agreements with or who have assigned their work to Contractor as appropriate. Contractor shall only engage consultants or subcontractors who have agreed to comply with Sections 6 and 7 of this Agreement as if they were a party hereto. Contractor and UMGC agree that UMGC is a third-party beneficiary of

such engagement agreements and UMGC has the right, but not the obligation, to enforce such engagement agreements in its own name. Contractor acknowledges and agrees that it is responsible under this Agreement for the acts and omissions of its consultants.

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

17.22. 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 17.21.B of this Agreement, no one shall be deemed to be a third party beneficiary of this Agreement.

17.23. Contract Integration and Modification. This Agreement and the documents incorporated herein form the entire agreement of the parties with respect to the subject matter of this procurement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may be amended with the written consent of both parties. Amendments may not significantly change the scope of the Agreement.

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

17.25. Business Continuity Plan. Contractor represents and warrants that it currently has certain business continuity plans in place throughout its organization that will be used in case of a disaster or other event that could result in the interruption of Contractor's capability to perform its obligations to UMGC 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 to ensure that they remain current. Contractor further agrees to inform UMGC immediately in the event it suffers a disaster or business interruption. Contractor agrees to maintain as a minimum a recovery point objective ("RPO") of twenty-four (24) hours and a recovery time objective ("RTO") of six (6) hours. Contractor acknowledges that UMGC, 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, UMGC may pursue all available legal remedies, including injunctive and other damages.

17.26. 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 UMGC 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 UMGC. Contractor agrees that UMGC may, by written notice to Contractor, terminate this Agreement if UMGC determines that Contractor has violated this provision.

17.27. Insolvency. In addition to and not in conflict with the provisions in Section 14 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.

17.28. Time is of the Essence. For all those sections of this Agreement where a number of days or time frame is required, Contractor acknowledges and agrees that time is of the essence as to the production and delivery of all products and services hereunder.

18. ENTIRE AGREEMENT.

18.1. The parties agree that this Agreement, including 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 the University's employees or students, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply.

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

UNIVERSITY OF MARYLAND
GLOBAL CAMPUS

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
TO SOFTWARE SERVICES AGREEMENT #TBD
CONTRACTOR'S ORDER FORM

This statement of work ("SOW") or order form ("Order Form") for _____ is issued in accordance with the Software Services Agreement (the "Agreement"), dated _____ by and between University of Maryland Global Campus (or "UMGC") and _____. This SOW or Order Form is subject to, shall be governed by the terms of, and is hereby incorporated into the Agreement. The terms and conditions of the Agreement apply unless this SOW or Order Form modifies or supplements such terms and conditions as set out below. In the event of a conflict in terms between this SOW or Order Form and the Agreement, the terms of the Agreement shall prevail. All capitalized terms not otherwise defined herein shall have the same meaning as in the Agreement. Any specification, design, user requirements document, installation checklist, etc., attached hereto and explicitly referenced herein shall be part of this SOW or Order Form, provided such documents are in writing and signed by an authorized representative of each party. No terms, provisions, or conditions of any purchase order will have any effect on the obligations of the parties hereunder or otherwise modify the Agreement or this SOW or Order Form.

Appendix C-2

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name: _____

Address: _____

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

C. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

D. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____ By: _____

Printed Name: _____