

**Summary of Terms and Conditions for Master Agreements
Master Software and Services Agreement 90936
USM/MEEC Learning Management Systems (LMS) and related services**

Note: This is only a summary. It is the Buying MEEC Member's responsibility to thoroughly familiarize itself with the Terms and Conditions of the Master Agreements.

1. General:

1.1 Awards were made to six (6) Master Contractors:

- Agilix Labs
- Blackboard, Inc.
- D2L, Ltd.
- eCollege dba NCS Pearson
- Instructure
- MoodleRooms

1.2 Each Master Contractor has signed the same generic Master Agreement. (generic Master Agreement is on the MEEC website. You must contact MEEC's Executive Director to obtain any Master Contractor's specific Master Agreement.)

The only customizations were:

- o the name/address of the Master Contractor and dates of Master Contractor's reference documents, as applicable throughout the Agreement
- o Exhibit 1: Examples of Contractor's Software Licenses/Professional Services Scope of Work/Subscription Services Agreement
- o Exhibit 2 – Contractor's Best and Final Price Proposal

1.3 IMPORTANT:

1.3.1 Order of Precedence, page 1, Paragraph 1 a. to h.:

- a. A Change Order to a Task Order Contract (TOC);
- b. A TOC done under this Master Agreement or a Purchase Order (PO);
- c. The Master Agreement and any exhibits, addenda or the like thereto whether or not physically attached ('Master Agreement');
- d. The Contractor's Software License/ Professional Services Scope of Work/Subscription Services Agreement (as may be applicable and as negotiated and entered into between Contractor and Buying MEEC Member) *Examples of this(ese) document(s)is(are) attached as Exhibit 1*
- e. Contractor's Task Order Proposal (TOP) to a Task Order Request for Proposal (TORP);
- f. Buying MEEC Member's TORP;
- g. The Contractor's Proposal only for responses to RFP Section III, Article 2, Paragraph 2.2 Scope of LMS Product Offerings and Approach to Access and Support of the Products and Paragraph 2.4 Staffing of the Account/Key

Personnel and the Best and Final Price Proposal; *changes in the assigned Key Personnel may occur over the term of the Agreement in accordance with Section 2.4 of this Master Agreement.*

- h. RFP 90936 Section III, Article 2, Paragraph 2.4 Staffing of the Account/Key Personnel

1.3.2 Exhibit 3 – The Implementation Process (pp 29-31) - This Exhibit of the Master Agreement details the responsibilities of each Buying MEEC Member who utilizes these Master Agreements.

- To remain in compliance with both the Board of Regents and the Board of Public Works approvals, the USM Institutions MUST request more than one Master Contractor to submit a proposal;
- All Buying MEEC Members are responsible for establishing policies and procedures to utilize these Master Agreements to ensure compliance with each Buying MEEC Member's procurement policies and procedures.
- Each Buying MEEC member is responsible for compliance and audits as may be applicable to it.

1.3.3 Important Notes:

- Unlike other MEEC contracts, the vendor's software license/Professional Services Agreement/Subscription Services Agreement is not universal. Each Buying MEEC Member is responsible to negotiate these documents with the Master Contractor. As a result, it is highly recommended that the Buying MEEC Member's Procurement and Legal Offices are involved when utilizing these Master Agreements.
- The Master Agreements take precedence over the Master Contractor's Software License/Professional Services Scope of Work/Subscription Services Agreement. These Master Agreements were negotiated to include the USM Required Contract Terms and Conditions (see Section 2. below for a summary of these terms.)
- The Buying MEEC Member's Task Order Contract (TOC) or Purchase Order (PO) takes precedence over the Master Agreement.

Refer to Paragraph 3.20, definition of Purchase Order. However, if a Buying MEEC Member uses a PO with pre-printed PO Terms and Conditions, the pre-printed Terms and Conditions do NOT supersede the Master Agreements UNLESS these pre-printed PO Terms and Conditions are specifically accepted by the parties.

2. Important Specifics of the Master Agreement:

2.1 Paragraph 2.2 – Contractor’s Best and Final Price Proposal (BAFO) is attached as Exhibit 2. A variety of unit prices were obtained. These are the maximum unit prices. Each Buying MEEC Member may negotiate lower prices however there is no obligation on the part of the Master Contractor to negotiate a better fee/price. The Master Contractor is also not obligated to extend any better fee/price from one MEEC Member to another. The unit prices are valid through June 30, 2013.

(Note: To analyze the BAFO’s, various scenarios were provided to the Master Contractors to apply their unit prices. The scenarios were developed as a cross section of profiles of MEEC Members.)

2.2 Pricing for Years 2, 3, 4, 5 - Master Contractor can request a price increase. Price increases shall not exceed Consumer Price Index.

2.3 Paragraph 2.4 - Each Master Contractor provided to MEEC a Dedicated Account Representative(s) to the Buying MEEC Members and a Single Point of Contact for the MEEC Executive Director. Refer to the “Master Contractor Contact List” for this information.

2.4 Paragraph 2.5 – Summarizes the Implementation Process that is detailed in Exhibit 3.

2.5 Paragraph 2.7 - Minority Business Enterprise Participation. - There was no goal set for the Master Agreements, but each Buying MEEC Member may set a goal as part of a Task Order Request for Proposal process (TORP) as may be applicable to the Buying MEEC Member’s jurisdiction.

2.6 Section 3. – Definitions -- All Buying MEEC Members should familiarize themselves with the Definitions section, especially:

- Materials
- Intellectual Property Rights
- Services
- Work
- Statement of Work
- Deliverable
- Purchase Order

These definitions define what the Contractor owns and what the Buying MEEC Member owns. It is important that the Buying MEEC Member can articulate in their TORP or requirements what its expectations are regarding these. You may need assistance from your respective Legal Office.

2.7 Section 4 – Term of the Agreement

- Per 4.1: The term of the Master Agreement is through June 30, 2017
- Per 4.2: Trial programs and/or proof of concepts may be conducted under these Agreements, however, the Contractor may charge fees related to such Pilot Programs.
- Per 4.3: Termination by Notice: USM/MEEC may cancel the Master Agreement with sixty days notice with no penalty. The Buying MEEC Member may cancel any Task Order Contract (TOC) with sixty days notice with no penalty.

Also, the Master Agreements are NOT exclusive. MEEC members may procure LMS products and services in another manner.

- Per 4.4: The Master Agreement(s) may be renewed for a period, or periods, not to exceed 5 additional years. MEEC would need to obtain necessary approvals if it elects to do so.
- Per 4.5: Any TOC's that commence during the term of the Master Agreement may be completed even if the Master Agreements terminate or expire before the completion of the TOC.

2.8 Section 6 – Ownership and Proprietary Rights

- Basically, the Contractor retains ownership rights to its materials and the Buying MEEC Member retains ownership rights to its materials.
- Per 6.2, Buying MEEC Member has the responsibility of providing to the Contractor with any copyright notice language that is applicable to the website or content in the LMS.
- Per 6.3 – Contractor indemnifies USM/MEEC and Buying MEEC Members with respect to any claim or action for intellectual property violations.
- Per 6.4 – Deliverables (as defined in Paragraph 3.16) are owned by the USM/MEEC or the Buying MEEC Member.
- Per 6.6 – Agreement is a “work for hire” with respect to Deliverables.
- Per 6.7 – Other than Deliverables and Contractor-Owned Materials, the Work Product is mutually owned and both parties can use such Work Product.
- Per 6.8 – Concept of “Know-how”

2.9 Section 7 – Confidentiality – very broad definition of Confidential Information

- Per 7.4 – Privacy Laws defined (i.e. FERPA, GLBA, and PIA)
- Per 7.11 – Contractor is obligated to implement security measures to ensure confidentiality of data is maintained

- Per 7.12 – USM/MEEC and its Buying Members are obligated to implement security measures to ensure confidentiality of Contractor’s confidential information
- 2.10 Section 8 – Evaluation and Acceptance Procedures
- Provides process for evaluation and acceptance of Deliverables
- 2.11 Section 9 – Representations and Warranties
- Per 9.2 – Contractor warrants that they comply with applicable laws
 - Per 9.3 – Warranty regarding software
 - 9.3.E – Warranties related to “hosted services”
- 2.12 Section 10 – Insurance
- It is recommended that Buying MEEC Members receive Insurance Certificates for specific Task Order Contracts or Purchase Orders in accordance with this Section
- 2.13 Section 11 – Indemnification
- Per 11.1 Contractor indemnifies USM/MEEC and Buying MEEC Member arising directly out of Contractor’s operations is resulting from Contractor’s negligence
 - Per 11.2 and 11.3, Contractor indemnifies USM/MEEC and Buying MEEC Member for any suit, claim, or proceeding for Contractor software infringement.
 - Per 11.4 – USM/MEEC and Buying MEEC Member shall not assume any obligations to indemnify, hold harmless, or pay attorneys’ fees under these Master Agreements.
- 2.14 Section 13 – Limitation of Liability
- Contractor’s liability is limited to the total fees paid by USM/MEEC Buying Members or \$500,000 whichever is greater
 - This Section 13 does NOT apply to Section 7. Proprietary and Confidential and Subsection 11.2 and 11.3 of Section 11 of Indemnification. For these sections, the Contractor’s liability is not limited.

- 2.15 Section 14 – Termination
- Per 14.1 – The Agreement or any TOC may be terminated for default
 - Per 14.2 – The Agreement of any TOC may be terminated for convenience, however, Contractor is entitled to retain the balance of the “prepaid annual license fee or one year of any prepaid license fee, whichever is less as reasonable costs associated with the termination.”
- 2.16 Section 17 – Miscellaneous Terms – These are generally the required USM Contract terms and conditions
- 2.16.1 17.1 A to D – Publicity/Use of Name and Logo –
- Buying MEEC Members should familiarize themselves with this provision . Contractor is authorized to identify USM/MEEC to potential customers, however, any other use of USM/MEEC’s or a Buying MEEC Member’s name, etc. is to be granted in writing by the appropriate party.
- 2.16.2 17.6 – Dispute Resolution – this is the USM’s Dispute Resolution; Buying MEEC Members may want to revise based on its jurisdiction, policies, or procedures.
- 2.16.3 17.17 – Maryland Law Prevails
- 2.16.4 17.21 – Subcontracting and Assignment
- Contractor may NOT subcontract any portion of the Services or any Task Order Contract without obtaining the prior written approval of the USM/MEEC or Buying MEEC Member.
- Buying MEEC Members should ask for this information to be provided in any Task Order Proposal (TOP)
- Neither party may assign the Master Agreement or any TOC without the prior written of the other party.
- 2.17 Exhibit 1 – Samples of Contractor’s Agreements - need to be separately negotiated between Buying MEEC Member and the Master Contactor as these documents apply to specific Task Order Requests for Proposals or PO’s
- 2.18 Exhibit 2 – Contractor’s BAFO and other pertinent pricing documents
- 2.19 Exhibit 3 – Implementation Process