

MASTER AGREEMENT 90936

This Master Software and Services Agreement (“Master Agreement” or “Agreement” or “Contract”) is made on this ____ day of _____, 2012, by and between the University System of Maryland /MEEC (“the University” or “USM/MEEC”), with offices at 3300 Metzert Road, Adelphi, MD 20783, and _____, (“Contractor” or “_____”), with offices at _____, FEIN # _____.

RECITALS

A. USM/MEEC has requested a proposal from Contractor for the provision of certain software and consulting or other professional services to USM/MEEC associated with Learning Management Systems (“LMS”) and related services, including but not limited to hosting services.

B. Contractor has demonstrated the system, provided a proposal dated _____, 2011, and provided clarifications to this proposal dated _____ 2011 as well as a Best and Final Price Proposal dated _____ (collectively the “Proposal”) in response to USM/MEEC's request. As a result, the parties enter into this Agreement to set forth their understanding;

NOW, THEREFORE, USM/MEEC and Contractor agree as follows:

1. NATURE OF THE 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);
- 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

2. SCOPE OF THE AGREEMENT

2.1 Contractor shall provide the learning management systems products and related implementation and consulting services as described in the Contractor’s proposal in accordance with the terms and conditions of this Agreement and the attachments to this Agreement.

2.2 Contractor’s Best and Final Price Proposal (attached as Exhibit 2 for ease of reference) provides unit prices based on a variety of licensing and services options including self-hosting

and hosted options. These unit prices are the maximum fees/prices for all MEEC members. For a given task order request for proposal (“TORP”) procured under this Master Agreement, nothing prohibits a Buying MEEC Member from negotiating a better fee/price. There is no obligation on the Contractor to negotiate a better fee/price. The Contractor is not obligated to extend any better fee/price from one MEEC Member to any other MEEC Member. The unit prices are valid through June 30, 2013

2.2.1 Prices for Year 2, 3, 4, and 5 of the Initial Term and any subsequent Renewal Term(s): It will be the responsibility of the Contractor to request a price increase, if any, by February 1 of each year of the Agreement. Any price increase request not received by that time, will not be considered and pricing in the subsequent year will remain as stated during the just completed Agreement term. A price increase, if any shall not exceed the Consumer Price Index (“CPI”) for “All Urban Consumers” as published by the US Department of Labor Statistics. For purposes of calculating the potential increase, the CPI to be used will be the index for twelve-month period ending at the previous calendar year. For example, if the contract year ends June 30, 2013, the price index for twelve-month period ending December 2012 will be used. Statistics will be referenced as a **cap** for negotiation purposes only. Contractor is not to assume that any price increase will be applied to yearly renewals. As well, increases are not cumulative for prior years; if a Contractor fails to request a price increase in one year and then requests an increase for the subsequent year, the Contractor cannot include a cumulative amount which includes the prior annual term. Any increase approved by USM/MEEC will take effect on July 1st of each year and be effective for a minimum of twelve (12) months.

2.3 If any or all of the products are quoted in the Contractor’s Best and Final Price Proposal at a minimum discount from the Contractor’s Educational Retail Price, the minimum discount shall be valid for the entire term of the Master Agreement including any renewal options that may be exercised by USM/MEEC.

2.4 The Dedicated Account Representative(s) for the Buying MEEC Members and the Single Point of Contact to the MEEC Executive Director shall be the same team identified in the Contractor’s Proposal responding to USM/MEEC’s solicitation unless (a) a change is requested by the Contractor and approved in writing by the Procurement Officer; or (b) a change is requested in writing by the Procurement Officer for good cause, in which case the Contractor shall make an appropriate substitution after notification to USM/MEEC, subject to USM/MEEC’s approval. Major changes in the Contractor’s organization or personnel (other than the Contractor’s Team) shall be reported to USM/MEEC in writing as they occur.

2.5 Implementation Process: A Buying MEEC Member, at its sole option, may from time to time prepare a document (“Task Order Request for Proposal” or “TORP”) which sets out the Buying MEEC Member’s LMS product(s) and/or Service(s) needs. Buying MEEC Members may issue the TORP to one or more of the awarded Contractors, however, the USM Institutions **must** request more than one of the awarded firms to submit a Task Order Proposal. The Contractor shall submit a Task Order Proposal (“TOP”) to the Buying MEEC Member in response to the issued TORP; such TOP shall include a price proposal based on the applicable rates per this Agreement and other information as requested in the TORP for evaluation by the Buying MEEC Member. The TOP will set forth the Contractor’s tasks, deliverables, and schedule. The Buying MEEC Member, at its sole discretion, will select the most advantageous TOP for the award. If Contractor’s Task Order Proposal is accepted by the Buying MEEC

Member, the Buying MEEC Member shall issue, as may be applicable to the TORP and negotiated between the Buying MEEC Member and the Contractor, the Contractor's Software License/Professional Services Scope of Work/Subscription Services Agreement, a Task Order Contract (TOC) and/or purchase order (PO) incorporating the TOP, which shall become part of this Agreement. The Buying MEEC Member and/or USM institution at its sole discretion will select the most advantageous proposal for the award of the Task Order Contract. (Exhibit 3 attached to this Agreement outlines the Implementation Process which may be adapted to the Buying MEEC Member's specific needs and requirements.)

2.6. The responsibilities of Contractor under Section 2.1 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.

2.7 There is no Minority Business Enterprise (MBE) goal set for this Master Agreement, however, a Buying MEEC Member may establish a MBE goal as part of the Task Order Request for Proposal process (TORP). MBE goals, if any, will comply with the Buying MEEC Member's jurisdiction regarding such socio-economic programs.

3. 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:

3.1 "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.

3.2 "USM/MEEC or Buying MEEC Member Materials" means those Materials owned by USM/MEEC or a Buying MEEC Member and supplied to Contractor by or for USM/MEEC or a Buying MEEC Member in connection with the Services that may be required for the Work and the Deliverables. USM/MEEC or Buying MEEC Member Materials specifically includes Materials which would be confidential or proprietary in respect to a private entity.

3.3 "Contractor-Owned Materials" means those Materials owned by Contractor which may be supplied by Contractor and/or licensed to USM/MEEC or Buying MEEC Member in connection with the Services, Work and Deliverables, including, but not limited to the Licensed Software attached as Exhibit 1.

3.4 "Student-Owned Materials" means any and all Materials supplied to Contractor by USM/MEEC students (including, but not limited to, biometrics and identifying information) accessing any and all services and products produced by Contractor for USM/MEEC or a Buying MEEC Member under and as contemplated in this Agreement ("Students").

3.5 "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.

3.6 “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.

3.7 “Services” means all work necessary to provide the service specified in a specific TORP, TOP, or TOC, or Change Order, which may include without limitation online hosting, development, installation, training, analysis, design, programming, testing, implementation, and consulting.

3.8 “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.

3.9 “Work” means any and all LMS products and/or services required within a Scope of Work, including a TORP/TOP/TOC 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 USM/MEEC or Buying MEEC Member under this Agreement. It is agreed that Work shall not include the Licensed Software or modifications thereto (as defined in Exhibit 1, if applicable to the TOC) or Contractor Owned Materials.

3.10 Buying MEEC Member (also reference to as “Buying Member” or “Member” or “MEEC Member”) – A member institution of MEEC that is in good standing and eligible to purchase under this Agreement.

3.11 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 LMS Contractors by a Buying MEEC Member for specific Learning Management System products and/or related services. A TORP may include a scope of work (“Scope”) developed in accordance with this Agreement which sets forth specific products and/or services required to be provided by the Contractor to the Buying MEEC Member under a Task Order Contract.

3.12 Task Order Proposal (or “TOP”) – A Contractors response to a Buying MEEC Member’s Task Order Request for Proposal.

3.13 Task Order Contract (or “TOC”) – An agreement entered into subsequent to the signing of the Master Agreement between a Buying MEEC Member and the Contractor that is specific to the LMS product and/or related services to be provided by the Contractor to the Buying MEEC Member. Such TOC may also contain specific mandatory terms and conditions applicable to the specific TORP SOW and/or to the Buying MEEC Member’s institutional requirements, including but not limited to how modifications to the TOC or Purchase Order will be handled. Some Buying MEEC Members may issue a Purchase Order as a Task Order Contract.

3.14 Statement of Work (SOW) – developed between Contractor and Buying MEEC Member that details the LMS products and related Services including, but not limited to, the approach and methodologies for delivery and provisions of the LMS products and/or related 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.

3.15 Day or day – Calendar day unless otherwise specified.

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

3.17 Contractor’s Dedicated Account Representative(s): Person (or persons) that Buying MEEC Members will directly contact for LMS needs and utilization of this Master Agreement.

3.18 Contractor’s Single Point of Contact: Person who is the sole point of contact to the MEEC Executive Director for administrative and contractual communications.

3.19 Procurement Officer: As used in this Agreement, the Procurement Officer for the Master Agreement; each individual Buying MEEC Member may designate its own procurement officer under a specific TOC.

3.20 Purchase Order: Purchase Order as used throughout this Agreement includes Purchase Orders issued by Buying MEEC Members that may contain preprinted PO Terms and Conditions. The preprinted Terms and Conditions will not supersede the terms and conditions in the Master Agreement, any Subscription or License Agreement unless the PO Terms and Conditions are specifically accepted by the parties.

4. TERM OF AGREEMENT

4.1 The term of this Agreement (the “Initial Term”) shall commence on the date of execution of this Agreement by the University and continue through June 30, 2017 unless otherwise extended or terminated as provided in this Agreement or as a matter of law.

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

4.3 Termination by Notice: In addition to the termination rights as set out in Section 14 of this Agreement, at the end of each fiscal year (July 1 through June 30), USM/MEEC reserves the right to cancel or discontinue, with sixty (60) days notice to the Contractor, the Master Agreement (or, the Buying MEEC Member reserves the right to cancel or discontinue any Task Order Contract done under the Master Agreement) at anytime during the Initial Term or any Renewal Term of the Master Agreement and/or Task Order Contract, whichever is applicable, without penalty if

deemed in its best interest. As well, USM/MEEC or the Buying MEEC Members may elect, at its sole discretion, to procure the products and services in another manner as this Master Agreement is non-exclusive.

4.4 Upon completion of the Initial Term, USM/MEEC may, at its sole option, elect to renew the Master Agreement for a period, or periods, not to exceed five (5) additional years ["Renewal Term(s)].

4.5 Any Task Order Contract that commences during the term or terms 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 4 and/or expired and the terms of this Agreement shall remain in full force and effect for the applicable Task Order Contract(s).

5. PAYMENT TERMS

5.1 Payment will be made in accordance with the terms and conditions set forth in this Agreement or in accordance with a Task Order Contract purchased under this Agreement. Contractor's fees for software licensing, hosting and professional services shall not exceed the rates set forth in the Master Agreement per the Contractor's Best and Final Price Proposal dated _____, 2011, as attached herein as Exhibit 2. The Buying MEEC Member's organization will be responsible for the processing of all payments to the Contractor.

5.2 Invoicing

5.2.1. Contractor will submit an invoice in US Dollars to the MEEC Buying Member which 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; and additional information as may be specifically required elsewhere in this Agreement or the Buying MEEC Member's TOC or Purchase Order.

5.2.2. Payments to Contractor pursuant to this Agreement shall be made no later than 30 days after Buying MEEC Member'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.

5.3.3. 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.

5.4 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 USM/MEEC or Buying MEEC Member. If USM/MEEC or Buying MEEC Member is exempt from any such taxes or fees, then such taxes or fees shall not be charged to USM/MEEC or Buying MEEC Member upon Contractor's receipt of a copy of USM/MEEC or Buying MEEC Member's tax exemption certificate or number.

5.5 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.

6. OWNERSHIP AND PROPRIETARY RIGHTS

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

6.2 USM/MEEC or the Buying MEEC Member 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 USM/MEEC or the Buying MEEC Member 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 USM/MEEC or the Buying MEEC Member, no language acknowledging the legal rights of any third party shall appear on materials without the prior written consent of USM/MEEC or the Buying MEEC Member.

6.3 Contractor agrees to indemnify and hold harmless and defend upon request USM/MEEC, the Buying MEEC Member, 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 6 and 7 of this Agreement.

6.4 Notwithstanding anything in the Agreement, TOP or TOC, to the contrary, any and all Deliverables shall be the sole and exclusive property of USM/MEEC or the Buying MEEC Member. 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.

6.5 Upon USM/MEEC's or the Buying MEEC Member's request or upon the expiration or termination of this Agreement, Contractor shall deliver or return all copies of the Work to USM/MEEC or the Buying MEEC Member. 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.

6.6 Contractor and USM/MEEC 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 or any Task Order Contract to be a work made for hire. If for any reasons the Deliverables would not be considered a work made for hire under applicable law, Contractor does hereby sell, assign and transfer to USM/MEEC, the Buying MEEC Member, 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/MEEC or the Buying MEEC Member may deem necessary to secure for USM/MEEC and/or the Buying MEEC Member the rights in the Deliverables.

6.7 Other than Deliverables and Contractor-Owned Materials, the tangible property and work products created by Contractor pursuant to this Agreement or any TOC ("Work Product") shall mutually belong to USM/MEEC, Buying MEEC Member, 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 or any Task Order Contract, all Deliverables shall be owned exclusively by USM/MEEC and/or Buying MEEC Member.

6.8 USM/MEEC and Buying MEEC Member 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. USM/MEEC and Buying MEEC Member'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/MEEC or Buying MEEC Member, 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 USM/MEEC and/or Buying MEEC Member will own the Know-how developed by USM/MEEC and/or Buying MEEC Member. 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 the USM/MEEC and Buying MEEC Member.

7. PROPRIETARY AND CONFIDENTIAL INFORMATION

7.1 Contractor acknowledges and understands that in connection with this Agreement, the performance of the Scope of Work and otherwise, Contractor has had or shall have access to, has obtained or shall obtain, or has been or shall be given the University's, MEEC's, or the Buying MEEC Member's Confidential Information (as defined herein). For purposes of this Agreement, "Confidential Information" means all information provided by the University, USM/MEEC, the Buying MEEC Member, or USM/MEEC Students to Contractor, including without limitation information concerning the University's, MEEC's, or the Buying MEEC Member'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.

7.2 Contractor shall use the Confidential Information only if and when required for the performance of the Services, and for no other purpose whatsoever, and only by Contractor employees engaged in that performance. 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.

7.3 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.

7.4 Contractor acknowledges and understands that USM/MEEC and its Buying Members 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 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/MEEC's or the Buying MEEC Member'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.

7.5 Contractor may disclose Confidential Information as required by legal process. If Contractor is required by legal process to disclose Confidential Information, Contractor shall immediately notify the University, MEEC, and the Buying MEEC Member, and before disclosing such information shall allow USM/MEEC and/or the Buying MEEC Member reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.

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

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

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

Executive Director
Maryland Education Enterprise Consortium
1450 South Rolling Road, Room 2.018
Baltimore MD 21227

AND

To the Buying MEEC Member's Legal Office or designee

7.9 Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that (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/MEEC and/or Buying MEEC Member 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.

7.10 Contractor agrees to use Student-Owned Materials, USM/MEEC or Buying MEEC Member-Owned Materials and USM/MEEC's or Buying MEEC Member'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).

7.11 Contractor will implement security measures at its offices and all other associated facilities in connection with Contractor software to ensure the strictest confidentiality of USM/MEEC and Buying MEEC Member's Owned Materials, USM/MEEC's and Buying MEEC Member'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 USM/MEEC or the Buying MEEC Member, Contractor shall return to USM/MEEC or the Buying MEEC Member, all USM/MEEC-Owned Materials, Buying MEEC Member Owned, USM/MEEC's or Buying MEEC Member's Confidential Information, all data, software provided to Contractor by USM/MEEC, Buying MEEC Member, student records, and any other proprietary information or materials that have not already been purged pursuant to this Agreement; alternatively and at USM/MEEC's or the Buying MEEC Member'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 USM/MEEC and/or Buying MEEC Member.

7.12 USM/MEEC and its Buying Members 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 USM/MEEC and the Buying MEEC Member for its own information and materials identified as confidential under this Agreement. Unless otherwise provided by separate agreement, upon termination of this Agreement, USM/MEEC and the Buying MEEC Member shall return to Contractor all Contractor-Owned Materials, including software, Source Code, and/or documentation provided to USM/MEEC or the Buying MEEC Member by Contractor; alternatively and at Contractor's option, USM/MEEC and the Buying MEEC Member shall destroy any or all of the aforementioned beyond recoverability. USM/MEEC or the Buying MEEC Member 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.

7.13 Contractor will notify USM/MEEC and/or the Buying MEEC Member as soon as commercially practical of any actual or suspected breach of security with respect to confidential information. Contractor will notify USM/MEEC and/or the Buying MEEC Member as soon as commercially practical of any unusual circumstances surrounding the LMS system delivery, 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.

7.14 In addition to the exceptions set forth in 7.9 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.

7.15 Except as specifically permitted by this Agreement, Contractor acknowledges that any unauthorized use, reproduction or disclosure of USM/MEEC or the Buying MEEC Member's Proprietary and Confidential Information and Property could result in irreparable injury to USM/MEEC and/or the Buying MEEC Member 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/MEEC and/or the Buying MEEC Member 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/MEEC and/or the Buying MEEC Member by law.

7.16 Except as specifically permitted by this Agreement, USM/MEEC or the Buying MEEC Member as the case may be, 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/MEEC or the Buying MEEC Member as the case may be, 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/MEEC.

8. EVALUATION AND ACCEPTANCE PROCEDURE – This section is applicable if a Task Order Contract or Purchase Order includes tangible work products identified as Deliverables per Section 6.6 above or may otherwise be negotiated between Contractor and MEEC Buying Member.

8.1 Upon completion and delivery of each Deliverable for the Task Order/Purchase by CONTRACTOR, MEEC Buying Member will begin the evaluation and acceptance process, which shall include, but not be limited to, the steps described below. Payments, in accordance with Section 8 of this Agreement will be based on either (i) the completion/ delivery of a Deliverable for a given Task Order/Purchase by CONTRACTOR and acceptance by MEEC Buying Member of each Task Order/Purchase Deliverable or (ii) as provided for the specific assignment. CONTRACTOR will demonstrate to MEEC Buying Member that the Task Order/Purchase Deliverable has been completed or has occurred and will provide MEEC Buying Member with written notice of the same.

8.2 Within the time period specified, or if not specified, then within thirty (30) business days of receipt by MEEC Buying Member of a scheduled task order/purchase Deliverable from CONTRACTOR, MEEC Buying Member shall determine whether such Deliverable Materially Conforms to the specifications defined in this Agreement. As used herein, the term "Materially Conforms" means that the Deliverable is ready to be used in production and meets or exceeds its intended functionality and performance. If the Deliverable Materially Conforms to the specifications, then MEEC's Buying Member's Project Coordinator will provide written confirmation to CONTRACTOR that the Deliverable is accepted.

8.3 If the Deliverable does not Materially Conform, MEEC's Buying Member's Project Coordinator will immediately notify CONTRACTOR with a written list of deficiencies. CONTRACTOR, at no additional cost to MEEC Buying Member, shall thereafter make all appropriate and necessary fixes to the Deliverable and return it to MEEC Buying Member within the time period specified, or if not specified, then within ten (10) business days for further testing by MEEC Buying Member or time frame agreed to in writing by MEEC's Buying Member's Project Coordinator. If the Deliverable again fails to Materially Conform then this same process will be repeated one more time. If the Deliverable fails to Materially Conform to the specifications after delivery for the second time then MEEC Buying Member may, at its sole option, declare CONTRACTOR in material breach of the Task Order Contract/Purchase and begin the termination process as defined in Section 14 of this Agreement. MEEC Buying Member may also, at its sole discretion, (a) further extend the timeframe for cure and (b) extend the warranty period, if applicable, or (c) begin the termination process for the Task Order/Purchase as defined in Section 14. of this Agreement. If MEEC Buying Member does not elect to terminate the Task Order/Purchase after the second failure, it has not automatically waived its right to do so following any additional failed attempt at correction by CONTRACTOR to which the parties may agree. CONTRACTOR acknowledges that all out of pocket expenses and travel costs incurred by it or on its behalf in connection with any failure of representations or warranties shall be solely its responsibility.

9. REPRESENTATIONS AND WARRANTIES

9.1 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.

9.2 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.

9.3. Software

Contractor hereby Warrants and Represents

- A. That it 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 contained in the applicable Task Order Contract.
- B. 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.
- C. 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.
- D. 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).
- E. If hosted services, the Contractor hereby warrants and represents:

Software Warranty. The Contractor warrants 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.

Security. 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.

SAS 70 or SSAE 16. On an annual basis, Contractor shall obtain SAS 70 or SSAE 16, or any successor standard, or industry equivalent that is generally recognized in its industry, reports (the “Reports”) for all facilities from which the Services are provided. If a Report states that a facility has failed to materially satisfy one or more control objectives, Contractor will, as USM/MEEC or Buying MEEC Member’s sole remedy, use commercially reasonable efforts to cause the facility to materially satisfy all control objectives. If, despite Contractor’s efforts, the facility cannot materially satisfy all relevant control objectives, Contractor will mitigate the issue in a commercially reasonable manner which may include the migration to an alternate facility which materially satisfies all control objectives. Failure to do so may be considered a material breach of this Agreement in the sole and reasonable discretion of USM/MEEC or Buying MEEC Member.

USM/MEEC or Buying MEEC Member 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/MEEC or Buying MEEC Member data. Audits will be at USM/MEEC’s or Buying MEEC Member’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/MEEC or Buying MEEC Member or its appointed audit firm performing their own audit, if Contractor has an external audit firm that performs a certified SSAE 16 (or applicable audit) review, USM/MEEC 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 SSAE 16 review for testing the controls that have an impact on its data.

10. INSURANCE

10.1 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.

The Buying MEEC Member may require the above insurance coverage limits be increased as needed on Task Orders done under this Agreement.

10.2 All policies for liability protection, bodily injury or property damage and fiduciary bonding must specifically name on its face USM/MEEC and its eligible MEEC Members as an additional named insured with respect to operations under this Agreement, including but not limited to Contractor’s data center or other premises where USM/MEEC and/or Buying MEEC Members’ 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 USM/MEEC and the Buying MEEC Member and to the

persons or property of employees, students, faculty members, agents, officers, regents, invitees, or guests of USM/MEEC and the Buying MEEC Member.

10.3 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".

11. INDEMNIFICATION

11.1 In addition to the obligations to indemnify set forth elsewhere in the Agreement, Contractor will indemnify and hold harmless USM/MEEC, the Buying MEEC Members, their 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 USM/MEEC and/or the Buying MEEC Member: (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/MEEC or the Buying MEEC Member settle any such claim without Contractor's prior written approval.

11.2 Contractor will defend and indemnify USM/MEEC and the Buying MEEC Member, or settle any suit, claim or proceeding for which the cause of action accrued during the term of the Master Agreement or any Task Order Contract done under the Master Agreement (collectively, a "Claim") brought against USM/MEEC and/or the Buying MEEC Member alleging that Contractor software infringes any U.S. patent, copyright, trademark, or other proprietary right, and shall pay any final judgment against USM/MEEC and/or the Buying MEEC Member, including all court awarded costs, damages and expenses, which result from any such claim, provided that USM/MEEC and/or the Buying MEEC Member: (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.

11.3 If USM/MEEC's or the Buying MEEC Member'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/MEEC and/or the Buying MEEC Member'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 USM/MEEC and/or the Buying MEEC Member the fees paid for the particular software or Services out of which the claim arose.

11.4 USM/MEEC and its Buying MEEC Members 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.

12. SOFTWARE

12.1 If CONTRACTOR licenses software to USM/MEEC and/or any Buying MEEC Member under this Agreement, Parties may if required, execute one or more agreements to create an escrow for the benefit of USM/MEEC and/or the Buying MEEC Member (collectively the “Escrow Agreement”). The cost of the Escrow account shall be borne by USM/MEEC or the Buying MEEC Member.

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

13. LIMITATION OF LIABILITY

NEITHER USM/MEEC NOR THE BUYING MEEC MEMBER 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 “7. PROPRIETARY AND CONFIDENTIAL INFORMATION” AND “SUBSECTIONS 11.2 AND 11.3 OF SECTION 11. 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 USM/MEEC BUYING MEMBERS UNDER THIS AGREEMENT DURING THE TERM OF THIS AGREEMENT OR \$500,000, WHICHEVER IS GREATER..

14. TERMINATION

14.1 Termination for Default If the Contractor fails to fulfill its obligation under this Agreement, or any Task Order done under the Agreement, properly and on time, or otherwise violates any provision of the contract, the USM/MEEC 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 the USM/MEEC's option, become the USM/MEEC's property. The USM/MEEC 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 the University 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.

14.2 Termination for Convenience The performance of work under this Agreement, or any Task Order done under this Agreement, may be terminated by the USM/MEEC and/or Buying MEEC Member, in accordance with this clause in whole, or from time to time in part, whenever the USM/MEEC or the Buying MEEC Member, as may be applicable, shall determine that such termination is in the best interest of the USM/MEEC and/or the Buying MEEC Member. The USM/MEEC and/or Buying MEEC Member will pay all reasonable costs associated with this Agreement or any Task Order done under this Agreement that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement or Task Order/Purchase Contract. In the event that USM/MEEC and/or Buying MEEC Member terminates under this provision, USM/MEEC and Buying MEEC Member 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.

15. Americans with Disabilities Act

Contractor assures USM/MEEC 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.

16. 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.

17. MISCELLANEOUS TERMS

17.1 Publicity/Use of Name and Logo

A. Contractor is authorized to identify USM/MEEC as a party to this Agreement for the purpose of identifying USM/MEEC as a customer to potential customers. However, any other use of USM/MEEC's or a Buying MEEC Member'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/MEEC or the applicable Buying MEEC Member.

B. Intentionally Omitted

C. This Agreement does not include a trademark license. Except as allowed by law for limited informational purposes, USM/MEEC or any of its Buying MEEC Members grants no rights to use any of its trademarks or service marks, for any purpose, without the prior and explicit written permission of USM/MEEC or the Buying MEEC Member, whichever is applicable. Under no circumstances does USM/MEEC or any of its Buying MEEC Members 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 USM/MEEC's sole discretion. Any violation of this Section 17.1 will be considered a material breach of any Task Order Agreement/Purchase entered into by a Buying MEEC Member and grounds for its immediate termination at the Buying MEEC Member'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:

If to USM/MEEC: 3501 University Boulevard East, Suite ICC-3120
Adelphi, Maryland 20783 USA
Attn: Valerie Rolandelli
Assistant Vice President of Strategic Contracting

vrolandelli@umuc.edu

If to 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 a Agreement with the State or USM/MEEC, 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 USM/MEEC may terminate this Agreement. Termination will occur according to Section 14 of this Agreement. This paragraph is also applicable to any Task Order Contract and/or purchase done under this Agreement. In the case of Task Order Contracts and/or purchase "USM/MEEC" is replaced with "Buying MEEC Member".

17.4 Suspension of Work:

The Procurement Officer of the applicable MEEC Member 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 USM/MEEC or the Buying MEEC Member. 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/MEEC or the Buying MEEC Member (as applicable) 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

A. Contractor and USM/MEEC and, for Task Orders/purchases its Buying Members, 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 its breach. Contractor and USM/MEEC and/or its Buying MEEC Members 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. 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 of the University.

(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.

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 USM/MEEC and will make them available for inspection and audit by authorized representatives of the USM/MEEC 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 USM/MEEC or Buying MEEC Member'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 USM/MEEC'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 USM/MEEC 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. USM/MEEC 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 6 (and Exhibit 1, if applicable)
- B. Proprietary and Confidential Information, Section 7 (and Exhibit 1, if applicable)
- C. Representations and Warranties, Section 9
- D. Indemnification, Section 11
- E. Limitation of Liability, Section 13

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 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, 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 or any Task Order Contract without obtaining the prior written approval of the USM/MEEC or Buying MEEC Member, whichever is applicable, nor may Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of USM/MEEC. If requested, subcontractors are to be identified in the Task Order Proposal submitted to the Buying MEEC Member 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/MEEC or a Buying MEEC Member 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/MEEC and/or the Buying MEEC Member 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/MEEC and/or the Buying MEEC Member for acts and omissions of subcontractors.

B. Contractor agrees that all Services provided by Contractor under this Agreement or any Task Order Contract including any amendment(s) 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/MEEC agree that USM/MEEC and the Buying MEEC Member is a third party beneficiary of such engagement agreements and USM/MEEC and the Buying MEEC Member 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/MEEC and/or the Buying MEEC Member. Contractor may designate a third party to receive payment without USM/MEEC's or the Buying MEEC Member's prior written consent unless in conflict with Maryland or federal law, but shall provide USM/MEEC and/or the Buying MEEC Member with notification thereof.

17.22 No Third Party Beneficiaries

This Agreement, or any Task Order Contract done under 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 or any Task Order Contract done under 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 USM/MEEC 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 USM/MEEC immediately in the event it suffers a disaster or business interruption. Contractor acknowledges that USM/MEEC, 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/MEEC 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 USM/MEEC or a Buying MEEC Member 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/MEEC and/or the Buying MEEC Member. Contractor agrees that USM/MEEC may, by written notice to Contractor, terminate this Agreement if USM/MEEC determines that Contractor has violated this provision. Contractor agrees that a Buying MEEC Member may, by written notice to Contractor, terminate any Task Order Contract/Purchase if Buying MEEC Member 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 or any TOC done under 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 The parties agree that this Agreement, including without limitation any Task Orders Contracts, Change Orders, Software Licenses/Professional Services Scope of Work/Subscription Services Agreements (*if applicable see Exhibit 1*), 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 hereby intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives.

University System of Maryland/MEEC

CONTRACTOR

Signature_____

Signature_____

Name__ William E. Kirwan_____

Name_____

Title_Chancellor_____

Title_____

Date_____

Date_____

Approved at Board of Regents on December 2, 2011.

Approved at Board of Public Works on December 21, 2011 Item 7-S.

EXHIBIT 1

EXAMPLES OF CONTRACTOR'S SOFTWARE LICENSE/PROFESSIONAL SERVICES SCOPE OF WORK/SUBSCRIPTION SERVICES AGREEMENT ARE ATTACHED SOLELY FOR EASE OF REFERENCE

To the extent USM/MEEC or Buying MEEC Member licenses Software from Contractor, including entering into a Subscription Services Agreement to use Software hosted by Contractor to be provided to USM/MEEC or the Buying MEEC Member on a software-as-service (SaaS) basis, Contractor's Software License Agreement/Subscription Services Agreement will be negotiated by the parties and the mutually agreed version thereof will be executed by the Contractor and the Buying MEEC Member.

EXHIBIT 2

CONTRACTOR'S BEST AND FINAL PRICE PROPOSAL
AND ANY OTHER APPLICABLE PRICING DOCUMENTATION

EXHIBIT 3
IMPLEMENTATION PROCESS

IMPLEMENTATION PROCESS

As the need for LMS products and/or related services arises, the Buying MEEC Member may from time to time prepare a document (“Task Order Request for Proposal” or “TORP”) which sets out the Buying MEEC Member’s LMS product(s) and/or Service(s) needs. Buying MEEC Members may issue the TORP to one or more of the awarded Contractors, however, the USM Institutions must request more than one of the awarded firms to submit a Task Order Proposal. The Buying MEEC Member reserves the right to request any information from the LMS Master Contractor(s) as it deems appropriate. In such instances, this requested information will be included in the scope of services/task order proposal request issued by the Buying MEEC Member.

The evaluation criteria and process is solely at the Buying MEEC Member’s discretion and will be included in the product requirements and/or scope of work for related services proposal request (TORP) issued by the Buying MEEC Member. The award will be based in accordance with the TORP request and may be based:

- a) solely on price with the lowest responsive and responsible cost receiving the award;
- b) on a combination of technical and price evaluation/ranking, or
- c) solely on technical expertise followed by the Buying MEEC Member negotiating a fee with the top ranked LMS Contractor; in the event of unsuccessful negotiations, the Buying MEEC Member may discontinue negotiations with the top ranked firm and proceed to the next rank, and so forth;

A. TORP/TOP: The task order request for proposal (TORP) process will generally be handled as follows, however, each Buying MEEC Member may adapt the TORP process to its specific needs and circumstances:

(1) The Buying MEEC Member’s applicable staff will

(i) prepare a written products requirements for the particular LMS product and/or scope of work for the related services inclusive (at a minimum) of:

- Product specifications, or if unknown, high level functional and technical requirements or business issue to be resolved;
- LMS implementation time frame/schedule; and,
- scope of services (“Scope”) required of the LMS Master Contractor;

(ii) conduct a pre-proposal meeting, if applicable, with the invited LMS Master Contractor(s).

(2) The LMS Master Contractor or Contractors shall submit a Task Order Proposal (“TOP”) to the Buying MEEC Member in response to the issued TORP for the LMS products and/or related services for the specified requirements. The TOP may include, but is not limited to, the following:

- (a) Product(s) being provided with accompanying specifications and functionalities, and license features;
- (b) If applicable, the names of the LMS Contractor's personnel who will manage the Contractor's staff assigned to the Buying MEEC Member's project for the services and/or implementation of the LMS inclusive of position and applicable background/resume and references so that the Buying MEEC Member may, if it so chooses, to check references of the Key Personnel.
- (c) Staffing Plan for the required LMS related services including, but not limited to, the number of technical and functional consultants, trainers, etc., and summary of the proposed staffs' expertise. The Buying MEEC Member may at its sole discretion request client references for any of these proposed staff so that it may check references.
 - 1. As part of the Staffing Plan, the LMS Contractor is to identify and provide qualifications for any subcontractors or third-party consultants that are being proposed to provide any of the requested services. The Buying MEEC Member may at its sole discretion request client references for any of the subcontractors or third-party consultants.
- (d) Similar experience with other customers/clients including contact information so that the Buying MEEC Member may, if it so chooses, to check references.
- (e) Quoted pricing for
 - 1) license fees for the LMS product and/or
 - 2) lump sum fee or not-to-exceed price for the implementation and other related services (dependent on the requirements within the Buying MEEC Member's Scope) with a breakdown by position, task hours for each, and billable hourly rate.

LMS Master Contractors are required to apply the applicable quoted unit costs or better (such as per FTE, per enrollment, per teacher, etc.) for the product costs; and/or hourly rates (or better); and/or minimum (or better) discount(s) off of the Contractor's educational retail prices whichever is applicable to the TORP or TOP. The maximum unit prices and/or minimum discount structure were established in the Contractor's Best and Final Price Proposal and are included in Exhibit 2 of the Master Agreement.)

- (f) A schedule of tasks to ensure that the required time frame to complete the work in accordance with the Buying MEEC Member's Scope/TORP, and,
- (g) If applicable, a statement indicating the MBE percentage commitment for the project (Note: Although the Master Agreement does not have a specific MBE Goal, successful Contractors are encouraged to seek out Maryland State Certified MBE's to participate in the resulting Task Order

Contracts. The Buying MEEC Member may set a MBE percentage goal for a specific TORP in accordance with the Buying MEEC Members jurisdiction for such socio-economic programs. If a MBE goal is set for a specific TORP, any required MBE Forms will be required to be completed and submitted as specified in the TORP. All MBE compliance is the responsibility of the Buying MEEC Member.

- B. Evaluation:** The applicable Buying MEEC Member will evaluate the TOP(s) in accordance with the criteria set forth in the TORP. The applicable Buying MEEC Member will review the TOP(s) received as well as may request an interview of assigned LMS team members and/or a demonstration of the specified/requested product(s) as part of the evaluation. As well, the Buying MEEC Member may request that a “sandbox” or other test environment be provided for end users to “test drive” the proposed LMS. The Buying MEEC Member may also conduct site visits to other users of the LMS or to the Master Contractor’s place of business as part of the evaluation.

Following the evaluation of the TOP(s), an award will be made by the Buying MEEC Member to the LMS Master Contractor(s) with the most advantageous proposal.

- C. Award:** A Task Order Contract (TOC) and/or Purchase Order (PO) will be issued by the Buying MEEC Member to the successful LMS Master Contractor for each specific task order.
- D. Change Order:** At any time, the Buying MEEC Member, at its sole discretion, may issue a change order to a TOC or Purchase Order.

CONTRACT AFFIDAVIT

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

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. 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 _____, 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: _____