

Contract No. 90809 - XXX

This Master Agreement (the “Agreement” or “Contract”) is entered into between _____, (hereinafter “Contractor”) and the University System of Maryland on behalf of the Maryland Education Enterprise Consortium (MEEC),(hereinafter “the USM/MEEC” or “MEEC member”).,

1. Scope Of Work:

Contractor will provide comprehensive Help Desk and Call Center Services (the “Services”) as ordered from time to time by MEEC members in good standing in accordance with the specifications, pricing, terms and conditions of RFP 90809 as amended from time to time, this Agreement, and Contractor’s proposal.

Comprehensive Help Desk and Call Center Services include, but is not limited to, management and staffing of learning management systems; PeopleSoft, Banner, Colleague or other ERP system(s); MS Office Suites portals for students, faculty, and staff; enrollment management and student services call centers; and technical support to other software and hardware applications for students, faculty and staff of MEEC members in good standing. The Agreement will be primarily for Level 1 Help Desk, however, may also be utilized, at the sole discretion of the MEEC member, for Level 2 support or for staff augmentation services related to the Services.. [Refer to Section 2 of the RFP as amended from time to time for sample application/systems and user support breakout.] The Contractor will work with the buying MEEC member in developing, managing, and staffing the applicable need for help desk and/or call center support to assist prospective students, current students and faculty as determined by the buying MEEC member.

MEEC reserves the right to add other institutions or applications during the term of the Contract(s). During the Term of the Agreement, it is expected that the Contractor providing the Services be able to adapt and grow in its support offerings with minimal or no additional cost as new technology and products are added to the education environment.

This is an indefinite delivery, indefinite quantity contract award. The USM/MEEC makes no guarantee that any specific amount of work or dollar commitment will be made after award of the Master Agreement. Task Order Contracts (TOC) and/or purchase orders will be issued by participating MEEC members on an as needed basis.

1.1 This Agreement consists of multiple documents as follows in order of precedence:

- This Agreement Form in its entirety including all Exhibits;
- RFP 90809 dated May 15, 2009 as amended via Addendum 1 dated 5/29/09; Addendum 2 dated 6/5/09, Addendum 3 dated 7/16/09, Addendum 4 dated 7/24/09, Addendum 5 dated 7/27/09, and Addendum 6 dated 7/28/09;
- Contractor’s Technical Proposal dated _____ for only sections _____ and Price Proposal dated _____; and,

- Statements of work, issued from time to time, pursuant to this Agreement (each of which is incorporated in this Agreement whether or not physically attached hereto).

1.2 The participating MEEC members in good standing, at its sole option, may from time to time prepare a statement of work (“SOW”) for the MEEC member’s Service needs and/or Task Order Request for Proposal (“TORP”) which sets forth the proposal requirements and selection process. Refer to Exhibit A of the Agreement for more details.

- The proposed statement of work (“SOW”) will set forth such items as follows: services, tasks, deliverables, service level agreements, and schedule, or other items deemed necessary by the MEEC member. (See Exhibit A - 3.1 (a) through (g))
- Task Order Proposal and Task Order Contract Security may, at the sole discretion of the buying MEEC member, be applicable to individual task orders provided under this Master Contract. (See Section 1 of RFP 90809 Section 11.)
- The Contractor shall submit a proposal to the requesting USM/MEEC member in response to the issued TORP; such proposals shall include a detailed, itemized price proposal based on the applicable unit rates per this Agreement and other information as may be requested in the TORP for evaluation by the MEEC Member in accordance with RFP 90809.
- Evaluation of the submitted proposals will be done in accordance with Exhibit A 3.1 b
- If Contractor’s proposal is accepted by the MEEC Member, the MEEC Member shall issue a purchase order or Task Order Contract (TOC) incorporating the statement of work, which shall become part of this Agreement

1.3 The MEEC members participating in this Master Agreement may terminate any purchase order/Task Order Contract by providing Contractor a written notice of termination. Contractor will discontinue the Service within no more than ten (10) calendar days of such written notice, and the MEEC Member will pay for such Services through the earlier of the actual discontinuation date or ten (10) days of such notice.

1.4 The requesting MEEC member may request one or more awarded firms to submit a Task Order Proposal. The requesting MEEC member at its sole discretion will select the most advantageous proposal for the award of the Task Order.

2. Compensation and Method of Payment

Per the unit pricing in Contractor’s Price Proposal dated _____ and the applicable SOW as agreed.

Payments to the Contractor pursuant to this Purchase Order shall be made no later than thirty (30) days after the University's receipt of a proper invoice from the 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.

Contractor's Federal Tax Identification Number or Social Security Number is _____

3. WORK PRODUCT

3.1 Contractor shall complete all reports, documentations, and presentations required by the USM/MEEC and other reports set forth in the relevant Task Order.

3.2 Contractor understands and agrees that any and all materials and deliverables that are subject to copyright protection and are developed in connection with the performance of this contract (Works) shall constitute a work for hire as that term is defined in the Copyright Act of 1976, as amended. As a result, all right, title and interest in and to all such Works shall belong exclusively to the applicable USM/MEEC member, including without limitation all copyrights and other intellectual property rights therein. If for any reason a Work is not deemed to be a work for hire, Contractor hereby grants, transfers, sells and assigns, free of charge, exclusively to the applicable USM/MEEC member, all title, rights and interest in and to said Work, including all copyrights and other intellectual property rights. The Contractor further agrees to execute and deliver to the applicable USM/MEEC member a confirmatory grant and assignment of all rights in and to Works and to execute any other proper document the applicable USM/MEEC member deems necessary to ensure the complete and effective transfer of all rights in Works to the applicable USM/MEEC member. Upon the USM/MEEC member's request or upon the expiration or termination of this Contract, Contractor shall deliver or return all copies of the Work to the applicable USM/MEEC member. The 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.

3.3 Notwithstanding the terms of Paragraph 3.2, Contractor is permitted to retain all rights to the intellectual capital (including without limitation, ideas, methodologies, processes, inventions and tools) developed or possessed by the Contractor prior to, or acquired during, the performance of the Services under this Contract.

3.4 USM/MEEC Ownership of Deliverables and Related Materials. In accordance with the preceding paragraph, Works developed in connection with this contract are the exclusive property of the applicable USM/MEEC member. Contractor agrees to deliver all Works to the applicable USM/MEEC member upon completion of the order. Works include but are not limited to editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, photostats, drawings and other production materials. Contractor shall be responsible for delivering all Works to the applicable USM/MEEC member no later than fifteen (15) working days from the date of final contract deliverables. In the event the Contractor fails to return all such materials by this deadline and the applicable USM/MEEC member desires to use Works again, Contractor shall provide the applicable USM/MEEC member with equivalent materials, at its own expense, or reimburse the University, in full, for the cost of developing equivalent materials.

3.5 In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records.

4. INTELLECTUAL PROPERTY

4.1. Neither party may use the other party's name, trademarks or other proprietary identifying symbols without the prior written approval of the other party.

4.2 The Contractor represents and warrants that any materials, software, or deliverables, including all Works, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials, software, or Works provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, USM/MEEC member shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, software, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the USM/MEEC member under law or equity.

4.3. Contractor agrees to defend upon request and indemnify and hold harmless the USM/MEEC member, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, software, supplies, equipment, Work, or services under this Contract. If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this contract, USM/MEEC member shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

4.4 The buying MEEC member grants to Contractor a royalty-free, non-exclusive, non-transferable, revocable license to use the MEEC member's name, logos, and other identifying symbols for the limited purposes of this Contract, provided Contractor is acting in accordance with instructions provided by the University. Such use will be in accordance with the approved MEEC Member's Identity Guide (if one exists) that will be provided to the Contractor by the MEEC Member.

4.5. In the event that Contractor hosts a web site or web page for the benefit of the Buying MEEC Member and/or its users, it shall clearly identify the page(s) and/or site(s) as such and include a privacy policy statement.

5. CONFIDENTIAL INFORMATION

5.1 Contractor acknowledges and understands that in connection with this Contract, the performance of the Services 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 member's Confidential Information (as defined herein). For purposes of this Contract, "Confidential Information" means all information provided by the University/MEEC member to Contractor, including without limitation information concerning the University's/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, and software and documentation. 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.
- 5.2 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.
- 5.3 Contractor shall not, in any manner whatsoever, disclose, permit access to, or allow use of Confidential Information to any person or entity except as specifically permitted or required under this Contract.
- 5.4 Contractor acknowledges and understands that certain Confidential Information may be protected under 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 University/MEEC member’s employees. The Contractor agrees that it shall be obligated to protect and may only maintain and use the Confidential Information in its possession or control in accordance with the Privacy Laws to the same extent as University/MEEC member would be obligated if the Confidential Information was in the possession or control of the University/MEEC member. 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. For the purpose of this Contract, Contractor shall follow and be bound by the interpretation and application that the University/MEEC member gives to the Privacy Laws. If Contractor complies with the University’s/MEEC member’s interpretation and application of the Privacy Laws, then the University shall have no cause of action against Contractor under this Contract if Contractor’s actions concerning the Confidential Information are found to be in violation of the Privacy Laws.
- 5.5 Contractor may disclose Confidential Information as required by legal process. If Contractor is required to disclose Confidential Information, Contractor shall immediately notify the University/MEEC member, and before disclosing such information shall allow University/MEEC member reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.
- 5.6 Contractor’s obligations with respect to Confidential Information shall survive the expiration or the termination of this Contract.
- 5.7 Contractor acknowledges that Contractor’s failure to comply fully with the restrictions placed upon use, disclosure and access to Confidential Information may cause the University/MEEC member grievous irreparable harm and injury. Therefore, any failure

to comply with the requirements of this Article 5 shall be a material breach of this Contract.

- 5.8 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 the appropriate Legal Office or the Attorney General's Office as designated by the Procurement Officer of the buying University entity or MEEC member.
- 5.9 Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that (a) is or becomes generally known to the public, other than as a result of disclosure by Contractor, (b) had been previously possessed by Contractor without restriction against disclosure at the time of receipt by Contractor, (c) was independently developed by Contractor without violation of this Contract, or (d) Contractor and the University/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.
- 5.10 All Confidential Information received by Contractor shall be returned to the University/MEEC member or destroyed upon completion or termination of this Contract.

6. RELATIONSHIP OF THE PARTIES

- 6.1 Nothing in this Contract shall be construed to establish a relationship of servant, employee, partnership, association, or joint venture between the parties. Neither party shall bind or attempt to bind the other to any contract, warranty, covenant or undertaking of any nature whatsoever unless previously specifically authorized in writing in each instance.
- 6.2 It is understood and agreed that Contractor is an independent contractor of the University/MEEC member, and not an employee. Except as set forth in this Contract, the University/MEEC member will not withhold income taxes, social security or any other sums from the payments made to Contractor hereunder. All employees or contractors of Contractor shall in no way be considered employees of the University/MEEC member, but rather they shall be employees or contractors of Contractor, and Contractor shall bear full responsibility for compensating those persons and for the performance of the Services by way of them.
- 6.3 Each party reserves the right to review all press releases or other public communications of the other party that may affect the party's public image, programs or operations.

7. **Invoicing** - Invoices shall be provided to the University's/MEEC member's designated representative. Contractor agrees to include on the face of all invoices billed to the University/MEEC member, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organizations. If a Purchase Order document is issued, the Purchase Order Number must be included.

8. Contract Term

The contract shall commence on the date the contract is executed on behalf of MEEC/the University, or such other date as MEEC/the University and the Contractor shall agree. The term of the contract will be for the scope of work as defined in Section 2 of the solicitation documents, anticipated to start on or around October 8, 2009 for a period of approximately 4 years and eight months (i.e. through June 30, 2014) (the "Term"). At the end of each year of the initial Term, MEEC/the University, at its sole option and with thirty (30) days notice to the Contractor, may elect to discontinue the contract with no further obligations to the Contractor and with no penalty. If MEEC/the University elects to discontinue the contract, a summation of work in progress will be made and a mutual agreement as to how to finalize this work in progress will be made.

Upon completion of the initial Term, MEEC/the University may, at its sole option, elect to renew the contract for a period not to exceed five (5) additional years (the "Renewal Term or Terms"). At the end of each year of any Renewal Term(s) (if any) MEEC/the University, at its sole option and with thirty (30) days notice to the Contractor, may elect to discontinue the Contract with no further obligations to the Contractor and with no penalty. If MEEC/the University elects to discontinue the Contract, a summation of work in progress will be made and a mutual agreement as to how to finalize this work in progress will be made.

9. Eligibility to Purchase

Contractor agrees to extend the proposed price structure and discounts to all University System of Maryland campuses and facilities and MEEC members in good standing within the state of Maryland.

10. Cost and Price Certification

The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- a. A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or
- b. A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.
- c. The price under this Contract and any change order or modification hereunder, including profit or, fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

11. Payment of University Obligations

Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the 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.

12. Multi-Year Contracts Contingent Upon Appropriations

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the University from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The University shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

13. Liquidated Damages

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

14. Specifications. All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in the solicitation.

15. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

16. Suspension of Work

The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the University.

17. Delivery and Acceptance

Delivery shall be made in accordance with the solicitation and/or task order specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The University reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met.

18. University Work Rules

Employees and agents of Contractor shall, while on the premises of the University, comply with all University rules and regulations. Contractor shall acquaint itself with conditions governing the delivery, receiving and storage of materials at the work site if applicable to this work, as not to interfere with University operations. Contractor shall not stop, delay, or interfere with University work schedule without the prior approval of the University's specified representative.

18.1. Sexual Harassment Sensitivity Training.

All of Contractor's Management employees that will provide service under this contract must complete not less than four hours of sexual harassment sensitivity training. Those managers will be responsible for conducting sexual harassment sensitivity training for all of Contractor's employees that work on site at the University/MEEC member.

19. Harmony

Contractor shall be entirely responsible for working in harmony with all others on the work site when Contractor is working on University premises.

20. MBE Subcontract Reporting Requirements

Contractor has agreed to subcontract not less than 25% of the Contract dollar total for the University System of Maryland buying entities with Maryland Certified MBE subcontractors (including those listed on MBE Attachment B of their price proposal). The individual buying University institution or MEEC Member will be responsible for all compliance activities associated with MBE activity. Other MEEC members in good standing, at their sole discretion, may also establish MBE requirements/participation goals in accordance with their jurisdictions' requirements and regulations. Required MBE participation will be stated in the MEEC Member's Task Order Request for Proposal.

As well, the Contractor will provide the University/MEEC designated representative with quarterly reports showing the amount invoiced to the University for any Services performed in that quarter, the MBE subcontractors used, and the amount paid to each MBE subcontractor for that quarter.

21. Insurance Requirements

Contractor shall maintain in full force and effect adequate insurance coverage per this Section of the Agreement to protect against the risks associated with the performance of Services under this Contract.

The Contractor shall defend, indemnify and save harmless the University System of Maryland, MEEC, its officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of the errors, omissions and performance or non-performance by the Contractor, employees or agents, of the work covered by this contract. The University/MEEC 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.

The Contractor shall secure, pay the premiums for, and keep in force until the expiration of this contract, including any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under this contract. The amounts of insurance coverage specified below shall be the minimum amount of available insurance to satisfy claims; a policy which allows the costs associated with investigating, management or defense of any claim, or any other cost incurred by the insured or the insurance carrier, to be deducted from the policy limits is not acceptable.

- a. Commercial General Liability Insurance including all extensions-
\$2,000,000 each occurrence;
\$2,000,000 personal injury;
\$2,000,000 products/completed operations;
\$2,000,000 general aggregated
- b. Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.
- c. Professional Liability Insurance, with a limit of not less than \$1,000,000 per occurrence.
- d. If automotive equipment is used in the operation, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.
- e. Products liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident.

All policies for liability protection, bodily injury or property damage must specifically and expressly name the University System of Maryland and MEEC as an insured with respect to operations under the contract and premises occupied by the Contractor. With respect to the Contractor's liability for bodily injury or property damage under the items

above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the University System and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University System.

Each insurance policy shall contain the following endorsement: "It is understood and agreed that the Insurance Company shall notify the Procurement Officer in writing forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy." A certificate of each policy of insurance shall be furnished to the Procurement Officer. With the exception of Workmen's Compensation, upon the request of the Procurement Officer a certified true copy of each policy of insurance, including the above endorsement manually countersigned by an authorized representative of the insurance company, shall be furnished. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice must always be furnished. Following the notice of contract award, the requested Certificates and Policies shall be delivered as directed by the Procurement Officer. Notices of policy changes shall be furnished to the Procurement Officer.

All required insurance coverages must be acquired from insurers registered to do business in the State of Maryland and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of Best's Insurance Reports.

Neither party shall be liable to the other for indirect, consequential, incidental, punitive, exemplary, or special damages, or losses, including without limitation lost profits and opportunity costs.

22. Non-Hiring of State 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 contract, 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.

23. Disputes

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

24. Termination for Convenience.

The performance of work under this contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. 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.

25. Termination for Default.

(1) The University may, subject to the provisions of paragraph (3) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances: (a) If the Contractor fails to perform within the time specified herein or any extension thereof-, or (b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the procurement officer may authorize in writing) after receipt of notice from the procurement officer specifying such failure.

(2) In the event the University terminates this contract in whole or in part as provided in paragraph (1) of this clause, the University may procure substitute performance upon terms and in whatever manner the procurement officer may deem appropriate, and the Contractor shall be liable to the University for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the University in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

(4) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the University, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled Disputes.

(5) If this contract is terminated as provided in paragraph (1) of this clause, the University, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the University, in the manner, at the times, and to the extent, if any, directed by the procurement officer, (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University; and the Contractor shall, upon direction of the procurement officer, protect and preserve property in the possession of the Contractor in which the University has an interest. Payment for completed supplies delivered to and accepted by the University shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the University and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and procurement officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The University may withhold from amounts otherwise due the Contractor hereunder such sum as the procurement officer determines to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders.

(6) The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(7) As used in paragraph (3) of this clause, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

26. Compliance with Laws

The 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 moneys due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- c. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; 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 Contract."

27. Retention of Records.

The Contractor shall retain and maintain all records and documents relating to this Purchase Order for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times.

28. Tax Exemption

The State is generally exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Taxes and Transportation Taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

29. Nondiscrimination in Employment

The 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 handicap 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.

30. Financial Disclosure.

The 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.

31. Political Contribution Disclosure.

The Contractor shall comply with Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws:

- a. before a purchase or execution of a lease or contract by the University, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and
- b. if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on (1) February 5, to cover the 6-month period ending January 31; and (2) August 5, to cover the 6-month period ending July 31.

32. Anti-Bribery.

The Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its 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 of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

33. Registration.

Pursuant to §7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston St., Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

34. Contingent Fee Prohibition.

The contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, 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.

35. 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 Contract are applicable to this Contract.

36. EPA Compliance

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

37. Occupational Safety and Health Act (O.S.H.A.).

All materials, supplies, equipment, or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

38. Maryland Law Prevails.

The provisions of this contract shall be governed by the laws of Maryland.

39. Software Licensing

Licensor represents and warrants that the software, as delivered to the University/MEEC member, 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. The software is hereby warranted to operate in accordance with its user

manuals, either automatically, upon the occurrence of Licensor-selected conditions, or manually on the command of Licensor.

40. MUCITA

The Maryland Uniform Computer Information Transactions Act (MUCITA), Maryland Code Annotated [Commercial Law] 21-101 through 21-816, does not govern this Agreement, except to the extent that section 21-104(2) of the Act applies. The parties further agree that this Agreement shall be governed by the common law of Maryland relating to written agreements and Maryland statutes other than MUCITA which may apply.

41. Protests and Claims

Any protest regarding the award of this contract or claim arising out of this contract shall be administered in accordance with the University System of Maryland Procurement Policies and Procedures, Section X - Protests and Claims. Detail is available by accessing the following web site: www.purchase.umd.edu

Click on this web site, then select the category "Policies and Procedures", followed by "USM Procurement Policies and Procedures".

42. Changes/Modifications

42.1 This Contract may be amended with the consent of both parties. Amendments may not change significantly the scope of the Contract.

42.2 The Procurement Officer may at any time, by written order, make unilateral changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when any supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

42.2.1 The section entitled "Delays and Extensions of Time" prohibits the Contractor from making charges or claims for damages for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. If a change, as allowed above, causes an increase or decrease in the cost of the work which is not time-related, the University shall make an equitable adjustment in the contract price and shall modify the contract.

42.2.2 The Contractor must assert its right to an adjustment under this section within 30 days from the date of receipt of the written order. Any request for an adjustment must be submitted in writing to the Procurement Officer.

42.2.3 Failure to agree to any adjustment shall be a dispute under the Disputes section. However, nothing in this section shall excuse the Contractor from proceeding with the contract as changed.

43. Ethics: This Contract is cancelable in the event of a violation of the Maryland Public Ethics Law by the Contractor or any University employee/MEEC member in connection with this Contract.

44. Equal Employment Opportunity

The Contractor warrants that the contractor shall comply with E.O. 11246, "Equal Employment Opportunity", as amended by E.O. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

45. Entire Agreement

This Agreement, any Attachments, and the University's standard contract terms and conditions, which are hereby incorporated by reference (and are available on the internet at <http://www.usmd.edu/Leadership/BoardOfRegents/Bylaws/SectionVIII/VIII300.html> – see Policy and Procedures Appendix A) contain the entire agreement of the parties and supersede all prior agreements and understanding, oral or otherwise, between the parties. No modification or amendment of this Agreement shall be effective unless the same shall be in writing duly executed by all parties hereto.

46. Conflicting Terms.

Any proposal for terms in addition to or different from those set forth in this contract or any attempt by the Contractor to vary any of the terms of this offer by Contractor's acceptance shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof, and this offer shall be deemed acceptable by the Contractor without the additional or different terms. If this purchase order is an acceptance of a prior offer by the Contractor, the acceptance is expressly conditioned upon Contractor's assent to any additional or different terms contained herein. The Contractor understands and agrees that the terms and conditions of this purchase order may not be waived.

AGREED TO BY: University System of Maryland
On behalf of the Maryland Education Enterprise
Consortium(MEEC)

AGREED TO BY: (Contractor)

By _____
(Signature)

By : _____
(Signature)

(Printed name)

(Printed name)

(Title)

(Title)

Date: _____

Date; _____

Exhibit A
Section 2 of RFP 90809
3. IMPLEMENTATION

3.1. Award of Projects/Task Orders: The buying MEEC/University member will follow the implementation processes outlined below.

- a. **Scope of Work and Proposals:** As the need for Help Desk Services arises, the buying MEEC member will contact one or more of the awarded HelpDesk Service Contractors. The task order proposal process will be handled as follows:
- (1) The MEEC member's applicable institutional staff will
 - (i) prepare a written scope of work for the particular Help Desk inclusive (at a minimum) of:
 - implementation time frame/schedule;
 - scope of services required including hours of operation;
 - required SLA's; and,
 - required bonding, if any;
 - (ii) conduct a pre-proposal meeting, if applicable, with one or more of the awarded Help Desk Service Contractors.
 - (2) The Help Desk Service Contractor or Contractors will provide to the buying MEEC/University member a proposal for Help Desk services for the specified project, that may include, but is not limited to, the following:
 - (a) Names of the Help Desk firm's personnel who will manage the staff for the project inclusive of position and applicable background/resume and references.
 - (b) Staffing Plan for the required help desk services including, but not limited to, the number of customer service representatives (CSR), the level of expertise of the staff, the shifts with number of agents per shift to be operated, and the hours per staff per shift (i.e., level of effort).
 - (c) The approach to providing the services including, but not limited to, the training of the CSR's, the telephony and the call tracking systems, building of knowledge base, quality assurance program, etc.

- (d) Similar experience with other customers/clients including contact information so that the MEEC member may, if it so chooses, check references.
- (e) Quoted lump sum fee or not-to-exceed price (dependent on the requirements within the MEEC's/University's scope of services) with a breakdown by position, task hours for each, and billable hourly rate (Help Desk Service Contractors are required to use the quoted unit prices established and specified in their master contract with MEEC/University.)
- (f) A schedule of tasks to ensure that the required time frame to complete the work in accordance with the MEEC's/University's scope, and,
- (g) A statement indicating the MBE participation percentage commitment for the project (Note: Contractor is encouraged to seek out Maryland State Certified MBE's to participate in all resulting Task Orders. The buying MEEC member may set a MBE percentage goal for a specific Task Order Request (TORP).

Note: In addition to the information noted above, the buying MEEC/University member reserves the right to request other information from a Help Desk Service Contractor as it deems appropriate. In such instances, this requested information will be included in the scope of services/proposal request issued by the applicable MEEC member.

- b. **Evaluation:** The applicable MEEC member will review the proposal(s) received as well as may request an interview of assigned call center team members and/or an "audition" whereby the buying MEEC members could call, e-mail, or chat with Level 1 support staff as part of the evaluation. The buying MEEC member may also conduct site visits as part of the evaluation.

Following the evaluation of the proposal, an award will be made by the buying MEEC member to the Help Desk Service Contractor(s) with the most advantageous proposal. The applicable MEEC member will evaluate the proposal(s) for, but not limited to, cost advantage, proposed assigned key personnel's expertise and time commitment, MBE commitment, ability to meet the required schedule, ability to provide the scope of services, etc.

The evaluation criteria and process is solely at the MEEC member's discretion and will be included in the scope of services/proposal request issued by the applicable MEEC member. The award will be based in accordance with the task order proposal 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 MEEC member negotiating a fee with only one Help Desk Services Contractor or, if more than one proposal is received, with the top ranked Help Desk Services Contractor; in the event of unsuccessful negotiations, the MEEC member may discontinue negotiations with the top ranked firm and proceed to the next rank, and so forth;
- c. **Award:** A Task Order Requirements Package (TORP) and/or Purchase Order (P.O.) will be issued by the buying MEEC member to the successful Help Desk Service Contractor for each specific task order.

Exhibit B

Contractor's Price Proposal

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT

I am the _____ (title) and the duly authorized representative of (business) _____ and that I possess the legal authority to make this affidavit on be of myself and the business 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) 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 of 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 business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

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 Bid/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: _____
(Authorized Representative and Affiant)