



REQUEST FOR PROPOSAL
RFP# 804913

MSU Broad Art Museum Website Redesign

RFP Timeline	
RFP Issue Date:	April 11, 2024
Deadline for Respondent Questions to MSU:	April 18, 2024
RFP Response Due Date:	May 7, 2024, 3:00 pm Eastern
Estimated Contract Award	May 21, 2024

RFP Contact	
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RFP Buyer	
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DESCRIPTION: Michigan State University (the “University” or “MSU”) is soliciting proposals through this Request for Proposal (“RFP”) for the purpose of the development of a new website that is user-friendly, informative, and engaging to visitors. The website must be able to showcase the Museum’s collection, exhibitions, events, and research and learning programs. The requested services are more thoroughly described under the Scope of Work Section of this RFP. Firms intending to respond to this RFP are referred to herein as a “Respondent” or “Supplier.”



PROPOSAL INSTRUCTIONS

- 1. PROPOSAL PREPARATION.** The University recommends reading all RFP materials prior to preparing a proposal, particularly these Proposal Instructions. Respondents must follow these Proposal Instructions and provide a complete response to the items indicated in the table below. References and links to websites or external sources may not be used in lieu of providing the information requested in the RFP within the proposal. Include the Respondent's company name in the header of all documents submitted with your proposal.

Document	Description	Response Instructions
Cover Page	Provides RFP title and number, important dates, and contact information for MSU	Informational
Proposal Instructions	Provides RFP instructions to Respondents	Informational
Respondent Information Sheet	Company and Contact Information, and Experience	Respondent must complete and submit by proposal deadline
Scope of Work	Describes the intended scope of work for the RFP	Respondent must complete and submit by proposal deadline
Pricing	Pricing for goods and services sought by the University through this RFP	Respondent must complete and submit by proposal deadline
Master Service Agreement	Provides legal terms for a contract awarded through this RFP	Deemed accepted by Respondent unless information required in Section 9, Master Service Agreement is submitted by proposal deadline

- 2. EXPECTED RFP TIMELINE.**

Activity	Date
Issue RFP	April 11, 2024
Deadline for Respondent Questions to MSU	April 18, 2024
RFP Response Due	May 7, 2024, 3:00 pm Eastern
Estimated Contract Award	May 21, 2024

- 3. CONTACT INFORMATION FOR THE UNIVERSITY.** The sole point of contact for the University concerning this RFP is listed on the Cover Page. Contacting any other University personnel, agent, consultant, or representative about this RFP may result in Respondent disqualification.
- 4. QUESTIONS.** Respondent questions about this RFP must be submitted electronically by email to the contact listed on the cover page of this RFP. In the interest of transparency, only written questions are accepted. Answers to all questions will be sent to Respondents via email. Submit questions by



referencing the following: (i) Question Number, (ii) Document Name, (iii) Page Number, and (iv) Respondent Question. Please refer to **Section 2** above for the deadline to submit questions.

5. **MODIFICATIONS.** The University may modify this RFP at any time. Modifications will be sent via email. This is the only method by which the RFP may be modified.
6. **DELIVERY OF PROPOSAL.** The Respondent must submit its proposal, all attachments, and any modifications or withdrawals electronically via email to the contact listed on the cover page of this RFP. **The price proposal should be saved separately from all other proposal documents and should be sent as a separate attachment from the other proposal documents.** The Respondent should submit all documents in a modifiable (native) format (examples include but are not limited to: Microsoft Word or Excel and Google Docs or Sheets). In addition to submitting documents in a modifiable format, the Respondent may also submit copies of documents in PDF. Respondent's failure to submit a proposal as required may result in disqualification. The proposal and attachments must be fully uploaded and submitted prior to the proposal deadline. **Do not wait until the last minute to submit a proposal.** The University **may not** allow a proposal to be submitted after the proposal deadline identified in the Cover Page, even if a portion of the proposal was already submitted.
7. **MANDATORY MINIMUM REQUIREMENTS.** The RFP may contain minimum qualifications, which will be identified as "**Mandatory Minimum Requirements**" in the Scope of Work Section of this RFP. If the RFP does contain mandatory minimum requirements, any proposal not meeting these minimum requirements **will be deemed non-qualified and will not be considered.** All proposals meeting these mandatory minimum requirements will proceed for review and evaluation consistent with **Section 8, Evaluation Process.**
8. **EVALUATION PROCESS.** The University will convene a team of individuals from various Departments within MSU to evaluate each proposal based on each Respondent's ability to provide the required services, taking into consideration the overall cost to the University. The University may require an oral presentation of the Respondent's proposal; conduct interviews, research, reference checks, and background checks; and request additional price concessions at any point during the evaluation process. The following criteria will be used to evaluate each proposal:

Criteria
Relevant experience to include prior work with arts or related sector, with further priority given to past work with MSU or other university
Innovative design approach
Overall Cost to the University (Cost-effectiveness and value for money)
Bandwidth (clarity of project and feasibility to deliver on time)

9. **MASTER SERVICE AGREEMENT.** The University strongly encourages strict adherence to the terms and conditions set forth in the Master Service Agreement. The University reserves the right to deem a proposal non-responsive for failure to accept the Master Service Agreement. Nevertheless, the Respondent may submit proposed changes to the Master Service Agreement in track changes (i.e., visible edits) with an explanation of the Respondent's need for each proposed change. Failure to include track changes with an explanation of the Respondent's need for the proposed change constitutes the Respondent's acceptance of the Master Service Agreement. General statements, such as "the Respondent reserves the right to negotiate the terms and conditions," may be considered non-responsive.



- 10. CLARIFICATION REQUEST.** The University reserves the right to issue a Clarification Request to a Respondent to clarify its proposal if the University determines the proposal is not clear. Failure to respond to a Clarification Request timely may be cause for disqualification.
- 11. RESERVATIONS.** The University reserves the right to:
- a. Disqualify a Respondent for failure to follow these instructions.
 - b. Discontinue the RFP process at any time for any or no reason. The issuance of an RFP, your preparation and submission of a proposal, and the University's subsequent receipt and evaluation of your proposal does not commit the University to award a contract to you or anyone, even if all the requirements in the RFP are met.
 - c. Consider late proposals if: (i) no other proposals are received; (ii) no complete proposals are received; (iii) the University received complete proposals, but the proposals did not meet mandatory minimum requirements or technical criteria; or (iv) the award process fails to result in an award.
 - d. Consider an otherwise disqualified proposal, if no other proposals are received.
 - e. Disqualify a proposal based on: (i) information provided by the Respondent in response to this RFP; or (ii) if it is determined that a Respondent purposely or willfully submitted false or misleading information in response to the RFP.
 - f. Consider prior performance with the University in making its award decision.
 - g. Consider total-cost-of-ownership factors (e.g., transition and training costs) when evaluating proposal pricing and in the final award.
 - h. Refuse to award a contract to any Respondent that has outstanding debt with the University or has a legal dispute with the University.
 - i. Require all Respondents to participate in a Best and Final Offer round of the RFP.
 - j. Enter into negotiations with one or more Respondents on price, terms, technical requirements, or other deliverables.
 - k. Award multiple, optional-use contracts, or award by type of service or good.
 - l. Evaluate the proposal outside the scope identified in **Section 8, Evaluation Process**, if the University receives only one proposal.
 - m. Utilize third parties to assist in the evaluation process, provided such parties are subject to confidentiality requirements.
- 12. AWARD RECOMMENDATION.** The contract will be awarded to the responsive and responsible Respondent who offers the best value to the University, as determined by the University. Best value will be determined by the Respondent meeting any mandatory minimum requirements and offering the best combination of the factors in **Section 8, Evaluation Process**, and price, as demonstrated by the proposal. The University will email a **Notice of Award** to all Respondents. A Notice of Award does not constitute a contract, as the parties must reach final agreement on a signed contract before any services can be provided. The awarded Respondent is prohibited from partnering with losing bidders unless the RFP specifically allows for such arrangement, and any violation of this prohibition may result in disqualification of the awarded Respondent.
- 13. GENERAL CONDITIONS.** The University will not be liable for any costs, expenses, or damages incurred by a Respondent participating in this solicitation. The Respondent agrees that its proposal will be considered an offer to do business with the University in accordance with its proposal, including the Master Service Agreement, and that its proposal will be irrevocable and binding for a period of 180 calendar days from date of submission. If a contract is awarded to the Respondent, the University may, at its option, incorporate any part of the Respondent's proposal into the contract. This RFP is not an offer to enter into a contract. This RFP may not provide a complete statement of the University's needs, or contain all matters upon which agreement must be reached. Proposals submitted via email are the University's property.



14. **FREEDOM OF INFORMATION ACT.** Respondent acknowledges that any responses, materials, correspondence or documents provided to the University may be subject to the State of Michigan Freedom of Information Act ("FOIA"), Michigan Compiled Law 15.231 *et seq.*, and may be released to third parties in compliance with FOIA or any other law.



RESPONDENT INFORMATION SHEET

Please complete the following Information Sheet in the space provided:

Information Sought	Response
Contact Information	
Respondent's sole contact person during the RFP process. Include name, title, address, email, and phone number.	
Person authorized to receive and sign a resulting contract. Include name, title, address, email, and phone number.	
Respondent Background Information	
Legal business name and address. Include business entity designation, e.g., sole proprietor, Inc., LLC, or LLP.	
What state was the company formed in?	
Main phone number	
Website address	
DUNS# AND/OR CCR# (if applicable):	
Number of years in business and number of employees	
Legal business name and address of parent company, if any	
Has your company (or any affiliates) been a party to litigation against Michigan State University? If the answer is yes, then state the date of initial filing, case name and court number, and jurisdiction.	
Experience	
Describe relevant experiences from the last 5 years supporting your ability to successfully manage a contract of similar size and scope for the services described in this RFP.	
Experience 1	
Company name Contact name Contact role at time of project Contact phone Contact email	
1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Experience 2	
Company name Contact name Contact role at time of project Contact phone	



Contact email	
1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Experience 3	
Company name Contact name Contact role at time of project Contact phone Contact email	
1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	



SCOPE OF WORK

Please address each of the sections below in a written response, which can be completed on a separate sheet (using the same section headings).

1. Background.

Opened in 2012, the Eli and Edythe Broad Art Museum (MSU Broad Art Museum) is an innovative and unconventional art museum on the campus of Michigan State University. It is the first stand-alone building designed by Pritzker Prize-winning architect Zaha Hadid in North America. The museum features a striking façade of pleated stainless steel and glass. The museum is named for Eli and Edythe Broad, longtime supporters of MSU, who provided the lead gift. The MSU Broad Art Museum presents a wide range of art, including works from its collection of over 10,000 objects. The MSU Broad Art Museum recently opened a new permanent space to display the collection; this space, The Center for Object Research and Engagement (The CORE) presented the largest update to the museum since the opening.

The MSU Broad Art Museum connects people with art through experiences that inspire curiosity and inquiry. With a focus on the art of our time—in dialogue with the historical—the museum encourages engagement with timely issues of local relevance and global significance. The museum is committed to amplifying perspectives and stories by underrepresented and oppressed communities through the arts. Paramount to Michigan State University, the museum advances diversity, equity, and inclusion with anti-racist approaches to exhibitions and programming. The museum is proud to acknowledge its history and lasting connection with the many people who ensured that an art museum was a vital part of the MSU and Greater Lansing communities.

2. RFP Objective.

The MSU Broad Art Museum is issuing a Request for Proposals from firms with extensive experience in website development. Experience working with arts and culture organizations is preferred, as well as past experience working with MSU or other similar sized universities.

The selected firm will work closely with the MSU Broad Art Museum's communications and leadership teams to design and develop a new website that aligns with the museum's updated communication, branding, and engagement goals and objectives. The objective of this website will reflect updated efforts to better align and resonate with MSU's students and campus community, while maintaining a distinct brand identity. The MSU Broad Art Museum requires the website to be user-friendly and flexible, adaptable, allowing us to be responsive to change and serve various museum functions – now and into the future. The design must bear in mind that the final website must be fully WCAG 2.2 compliant. The design must provide space for a robust archive for the museum, allowing for a variety of media to catalog the museum's collection and past exhibitions.

At the project's end, the selected firm will deliver a fully functional website with a user-friendly design, an accessible and engaging layout, and effective navigation and structure. The website will reflect the museum's updated brand guidelines and effectively communicate with our core audiences. Additionally, guidelines and procedures for maintaining the website will be provided.



3. Scope of Work.

The MSU Broad Art Museum is seeking proposals for the development of a new website that is user-friendly, accessible, dynamic, and engaging to users. The website must be able to showcase the museum's collection, exhibitions, events, and visitor information, among other things.

The selected Supplier will be responsible for the following deliverables:

1. Design and development of a new website, including layout, navigation, and functionality.
2. An easy-to-use Content Management System (CMS) that allows users to create, manage, and publish various multimedia.
3. Integration of the museum's collections databases to highlight collections throughout website.
4. Integration of online ticketing and registration systems through Blackbaud's Altru to provide a seamless user experience.
5. Integration of marketing tools, such as Mailchimp.
6. Mobile-responsive design that provides seamless user experience across all devices.
7. Facilitating web-hosting solutions for file storage.
8. Search engine optimization to improve the visibility of the website on search engines.
9. Ensure the website complies with the Web Content Accessibility Guidelines set out in WCAG 2.2.



PRICING

Please include a Pricing proposal as identified below on a separate sheet.

Item	Proposed Cost
One Time Costs	
Implementation Cost	
Post-implementation support beyond the scope of this RFP	
One-Time Cost Sub-total:	



MASTER SERVICE AGREEMENT

Master Service Agreement (Website Development)

This Master Services Agreement (this “**Agreement**”) is agreed to between Michigan State University (the “**University**”) and [INSERT COMPANY NAME] (“**Supplier**”), a [INSERT STATE & ENTITY STATUS, E.G., A MICHIGAN CORPORATION OR A TEXAS LIMITED LIABILITY COMPANY]. This Agreement is effective on [MONTH, DAY, YEAR] (“**Effective Date**”), and unless earlier terminated, will expire on [MONTH, DAY, YEAR] (the “**Term**”).

This Agreement may be renewed for up to three (3) additional two (2) year periods. Renewal must be by written notice from the University and will automatically extend the Term of this Agreement.

1. Definitions.

"**Action**" has the meaning set forth in **Section 10.1**.

"**Accessibility Requirement**" has the meaning set forth in **Section 2.3**.

"**Agreement**" has the meaning set forth in the preamble.

"**Approved Third-Party Materials**" has the meaning set forth in **Section 2.8(a)**.

"**Confidential Information**" has the meaning set forth in **Section 12.1**.

"**Content**" means any audio, visual and audiovisual content, including illustrations, graphics, photographic images, music, sound effects, lyrics, narration, text, film, video, animation, characters and interface layouts and designs, whether or not the same qualify for or are protected by any Intellectual Property Rights.

"**Deliverables**" means, as the context dictates, the Design Deliverables, the Development Deliverables or, collectively, the Design Deliverables and Development Deliverables.

"**Design Deliverables**" means all documents, work product and other materials that Supplier is required to or otherwise does deliver to University hereunder in connection with the Design Services, including those items designated under the heading "Design Deliverables" in the Statement of Work.

"**Design Services**" means the website design services described in the Statement of Work.

"**Development Deliverables**" means each separately deliverable portion of the Website and the final Website as a whole, each together with the Documentation therefor, and all other work product and other materials that Supplier is required to or otherwise does deliver to University hereunder in connection with



the Development Services, including those items designated under the heading "Development Deliverables" in the Statement of Work.

"Development Services" means the website development services described in the Statement of Work.

"Documentation" means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents and materials, in printed and electronic form, that describe the functionality, installation, operation, use, maintenance and technical specifications of the Website.

"Effective Date" has the meaning set forth in the preamble.

"Fees" has the meaning set forth in **Section 5.1**.

"FERPA" has the meaning set forth in **Section 13**.

"Force Majeure Event" has the meaning set forth in **Section 15.1**.

"Hosting Environment" means all servers, server software, hosting platforms, storage space, telecommunications connectivity and equipment, and other hardware, software, technology, and other materials Supplier is required to, or otherwise does, use, provide, or provide access to as part of the routine day-to-day Hosting Services, as described in the Statement of Work.

"Hosting Services" means the website hosting services described in the Statement of Work.

"Intellectual Property Rights" means all or any of the following, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) other intellectual property rights.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"Milestone" means an event or task described in the Statement of Work for which there is a corresponding date by which it must be completed in the Milestone Schedule.

"Milestone Schedule" means the schedule set forth in the Statement of Work setting out the dates by which the parties are required to achieve the Milestones.

"Non-Acceptance Notice" has the meaning set forth in **Section 3.4(b)(i)**.



"**Open-Source Components**" means any software components that are subject to any open-source copyright license agreement, including but not limited to any GNU General Public License or GNU Library or Lesser Public License, or other license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative.

"**Open-Source License(s)**" has the meaning set forth in **Section 2.9**.

"**Permitted Subcontractor**" has the meaning set forth in **Section 2.7**.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

"**Pre-Existing Materials**" means all Content and any other information in any form or media, including documents, data, know-how, ideas, specifications and software code, in which Supplier owns all Intellectual Property Rights and that (a) were developed or otherwise acquired by Supplier prior to the Effective Date and (b) are identified as pre-existing materials in the Statement of Work.

"**Representatives**" means Supplier's employees, officers, and Permitted Subcontractors.

"**Security Incident**" has the meaning set forth in **Section 14**.

"**Services**" means, collectively, the Design Services, the Development Services and all other services Supplier is required to provide hereunder as described in the Statement of Work.

"**Site Specification**" means the specification document setting forth the design, content, features, functionality, technical and other specifications for the Website, which will be attached as an exhibit to the Statement of Work.

"**Statement of Work**" means the Statement of Work, attached as Schedule A to this Agreement, that details the specific website development project whereby University has engaged Supplier to perform Services.

"**Supplier**" has the meaning set forth in the preamble.

"**Supplier Personnel**" means all employees of Supplier and any Permitted Subcontractors involved in the performance of Services hereunder.

"**Term**" has the meaning set forth in the preamble.

"**Testing Period**" has the meaning set forth in **Section 3.4(a)**.

"**Third-Party Materials**" means Content and any other materials in any form or media, including but not limited to documents, data, know-how, ideas, specifications and software code, in which any Person other than University or Supplier owns any Intellectual Property Right, but specifically excluding Open Source Components.



"**University**" has the meaning set forth in the preamble.

"**University Materials**" means, collectively, all Content and all other information in any form or media, including but not limited to documents, data, know-how, ideas, specifications, software code and other materials provided to Supplier by or on behalf of University hereunder, whether or not the same: (a) are owned by University, a third party or in the public domain; or (b) qualify for or are protected by any Intellectual Property Rights.

"**Website**" means the website to be designed and developed by Supplier hereunder.

"**Work Product**" means the Website and all Deliverables, Documentation, Specifications and other documents, work product and materials related thereto that Supplier is required to or otherwise does create or provide to University in connection with the Services hereunder.

2. **Supplier Obligations.**

2.1 Design and Development Services and Deliverables. Supplier shall perform the Services to design and develop the Website that fully conforms to the Accessibility Requirement, the Site Specification, and Documentation, and will provide all Deliverables to University on a timely basis in accordance with the Statement of Work and Milestone Schedule. Without limiting the foregoing:

(a) All Design Deliverables shall be subject to University's review and approval as set forth in **Section 3.2**; and

(b) All Development Deliverables and the Website shall be subject to the testing and acceptance procedures set forth in **Section 3.3** and **Section 3.5**.

(c) All Documentation shall:

(i) include such information as is reasonably necessary to enable University's personnel to install, operate, use and maintain and update the Website.

(ii) be provided in both hard copy and electronic form, in such formats and media as are set forth in the Statement of Work.

2.2 Hosting Services. Supplier shall continuously host and maintain the Website and the Hosting Environment to optimize performance of the Hosting Services and ensure they meet or exceed the service levels specified in the Statement of Work. Such maintenance services shall include:

(a) Implementing all necessary updates, bug fixes, enhancements, new releases, new versions, and other improvements or repairs to the Hosting Environment, so that the Website and Hosting Services operate properly in accordance with this Agreement and the Site Specifications; and



(b) Remaining aware of advances in technologies related to or used in website hosting and platforms, including those related to security, and, implementing such changes to the Hosting Environment as are reasonably necessary to ensure the Website's:

- (i) continued interoperability and compatibility with new standard technologies; and
- (ii) security and integrity, including with respect to the confidentiality, privacy, and integrity of all Website Content, user information, and usage data according to the requirements and standards set forth in this Agreement, the Site Specifications, and applicable Law.

2.3 Accessibility Requirement. The University is required to comply with the Americans with Disabilities Act of 1990 (ADA) and has adopted a formal policy regarding accessibility requirements for websites and software applications. The Development Deliverables and the Website must comply with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.1 or higher (the "**Accessibility Requirement**").

2.4 Branding Requirement. The Development Deliverables and the Website must comply with MSU's website branding requirements available at <https://comms.msu.edu/resources/msu-web-standards>.

2.5 Project Management. Each party shall maintain within its organization a project manager to serve as such party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services under the Statement of Work. Each such project manager shall be responsible for providing all day-to-day consents and approvals. Each party shall ensure its project manager has the requisite organizational authority, and necessary skill, experience and qualifications, to perform in such capacity. The parties' project managers will be identified in the Statement of Work. Each party shall use commercially reasonable efforts to maintain the same project manager in place throughout the provision of Services under the Statement of Work. If either party's project manager ceases to be employed by such party or such party otherwise wishes to replace its project manager, such party shall promptly name a new project manager by written notice to the other party.

2.6 Supplier Personnel Confidentiality and Proprietary Rights Agreements. Prior to any Supplier Personnel performing Services hereunder, Supplier shall require such Supplier Personnel to execute written agreements that bind such Supplier Personnel to confidentiality provisions that are at least as protective of University's information as those contained in this Agreement and Intellectual Property ownership provisions that grant University ownership rights in the Work Product consistent with the provisions of **Section 6.1**. Upon University's request, Supplier shall provide University with a copy of the executed original of each such agreement;

2.7 Subcontractors. Supplier shall not, without the prior written consent of University, which consent may be given or withheld in University's sole discretion, engage any Person that is not an employee of Supplier to perform Services or provide Deliverables hereunder. University's approval of any



such Person (each approved Person, a "**Permitted Subcontractor**") shall not relieve Supplier of its obligations under the Agreement and Supplier shall:

(a) be responsible and liable for the acts and omissions of each Permitted Subcontractor (including its employees) to the same extent as if such acts or omissions were by Supplier or its employees.

(b) prior to the commencement of Services by any Permitted Subcontractor, enter into a written agreement with such Permitted Subcontractor that binds such Permitted Subcontractor to confidentiality provisions that are at least as protective of University's information as those contained in this Agreement and Intellectual Property ownership provisions that grant University ownership rights in the Work Product consistent with the provisions of **Section 6.1**, and upon University's request provide University with a copy of the executed original of such agreement;

(c) be responsible for all fees and expenses payable to any Permitted Subcontractor, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

2.8 Third-Party Materials.

(a) Supplier shall not include in the Website, and operation of the Website in accordance with the Accessibility Requirement, the Site Specification, and Documentation shall not require the use of, any Third-Party Materials, other than Third-Party Materials expressly approved by University and described in the Statement of Work and licensed to University in accordance with **Section 7.3 ("Approved Third-Party Materials")**.

(b) Except as specifically provided in the Statement of Work, Supplier shall be solely responsible for securing, at its sole cost and expense, all necessary rights, licenses, consents and approvals necessary for University to use, as incorporated into or otherwise used in conjunction with the Website, perpetually and throughout the world, all Approved Third-Party Materials.

2.9 Open-Source Components. Supplier shall not include in the Website, and operation of the Website in accordance with the Accessibility Requirement, the Site Specification, and Documentation shall not require the use of, any Open Source Components, except for any Open-Source Components expressly approved by University and identified in, and for which the relevant open source license ("**Open-Source License**") is attached as an exhibit to, the Statement of Work.

2.10 Time is of the Essence. Supplier acknowledges that time is of the essence with respect to Supplier's obligations hereunder and that prompt and timely performance of all such obligations in accordance with all timetables, Milestone Schedules and other requirements schedules and deadlines in this Agreement is strictly required.



2.11 University Changes. The University may at any time request in writing (each, a “**Change Request**”) changes to the Statement of Work, including changes to the Services, Work Product, Milestone Schedule, or the Site Specification (each, a “**Change**”). Upon the University’s submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this Section.

(a) As soon as reasonably practicable, and in any case within twenty (20) Business Days following receipt of a Change Request, Supplier will provide the University with a written proposal for implementing the requested Change (“**Change Proposal**”), setting forth:

- (i) a written description of the proposed Changes to any Services, Work Product, or Deliverables;
- (ii) an amended Milestone Schedule reflecting: (A) the schedule for commencing and completing any additional or modified Services, Work Product, or Deliverables; and (B) the effect of such Changes, if any, on completing any other Services or Work Product under the Statement of Work;
- (iii) any additional Third-Party Materials, Open-Source Components, and University Materials Supplier deems necessary to carry out such Changes; and
- (iv) any increase or decrease in Fees resulting from the proposed Changes, which increase or decrease will reflect only the increase or decrease in time and expenses Supplier requires to carry out the Change.

(b) Within thirty (30) Business Days following the University’s receipt of a Change Proposal, the University will by written notice to Supplier, approve, reject, or propose modifications to such Change Proposal. If the University proposes modifications, Supplier must modify and re-deliver the Change Proposal reflecting such modifications, or notify the University of any disagreement, in which event the parties will negotiate in good faith to resolve their disagreement. Upon the University’s approval of the Change Proposal or the parties’ agreement on all proposed modifications, as the case may be, the parties will execute a written agreement to the Change Proposal (“**Change Notice**”), which Change Notice will be signed by both parties and will constitute an amendment to the Statement of Work to which it relates; and

(c) If the parties fail to enter into a Change Notice within fifteen (15) Business Days following the University’s response to a Change Proposal, the University may, in its discretion:

- (i) require Supplier to perform the Services under the original Statement of Work without the Change;
- (ii) require Supplier to continue to negotiate a Change Notice;
- (iii) initiate a Dispute Resolution Procedure; or



- (iv) notwithstanding any provision to the contrary in the Statement of Work, terminate the Statement of Work.

(d) No Change will be effective until the parties have executed a Change Notice. Except as the University may request in its Change Request or otherwise in writing, Supplier must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Supplier will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.

(e) The performance of any functions, activities, tasks, obligations, roles and responsibilities comprising the Services as described in this Agreement are considered part of the Services and, thus, will not be considered a Change. This includes the delivery of all Deliverables in accordance with the Accessibility Requirement and the Site Specifications, and the diagnosis and correction of non-conformities discovered in Deliverables prior to their Acceptance by the University or, subsequent to their Acceptance by the University, as necessary for Supplier to fulfill its associated warranty requirements.

3. Delivery, Testing and Acceptance.

3.1 Delivery. Upon completion of the Services under the Statement of Work, Supplier shall deliver or otherwise make available to University the Deliverable(s) in accordance with the delivery criteria set forth in the Statement of Work. Supplier shall deliver:

- (a) all software in both object code and fully annotated source code; and
- (b) each Development Deliverable with complete Documentation therefor.

No Development Deliverable shall be deemed to have been delivered unless and until the Supplier has provided all of the foregoing.

3.2 Design Deliverable Review and Approval.

(a) All Design Deliverables will be subject to the review and approval process set forth in the Statement of Work.

(b) The Design Services will be considered complete when University has approved in writing all Design Deliverables required under the Statement of Work. If Supplier fails to complete the Design Services on a timely basis in accordance with the Milestone Schedule, such failure will be deemed a material breach of this Agreement that is incapable of cure, for which University will have the right to terminate the Statement of Work in accordance with **Section 8.1**. The foregoing is in addition to, and not in lieu of, all other remedies that may be available.



3.3 Pre-Delivery Testing of Development Deliverables. Before delivering and deploying the Development Deliverable, Supplier must:

- (a) test the Development Deliverable to confirm that it is fully operable, and will function in accordance with the Accessibility Requirement, Site Specification and Documentation;
- (b) scan the Development Deliverable using industry standard scanning software and definitions to confirm it is free of Harmful Code; and
- (c) remedy any non-conformity or Harmful Code identified and retest and rescan the Development Deliverable.

3.4 Development Deliverable Testing and Acceptance. Upon University's receipt of each Development Deliverable:

- (a) University will have fifteen (15) days ("**Testing Period**") to inspect and test such Development Deliverable to ensure that it conforms to the Accessibility Requirement, Site Specification, and Documentation therefor.
- (b) If University determines any Development Deliverable does not conform to the Accessibility Requirement, the Site Specification or Documentation:
 - (i) University shall notify Supplier in writing of such non-conformity(ies) ("**Non-Acceptance Notice**").
 - (ii) Following receipt of a Non-Acceptance Notice, Supplier, at Supplier's sole cost and expense, shall remedy all non-conformities and re-deliver the Development Deliverable in accordance with the applicable requirements set forth in the Statement of Work as promptly as commercially possible and, in any case, within fifteen (15) days.
- (c) The parties shall repeat the process set forth in **Section 3.4(a)** and **Section 3.4(b)** until the Deliverable has been accepted as set forth in **Section 3.4(d)**, provided, however, if Supplier: (x) fails to re-deliver any Development Deliverable within the time period specified in **Section 3.4(b)(ii)** or (y) fails more than once to remedy a non-conformity, such failure will be deemed a material breach of this Agreement that is incapable of cure, and University will have the right, at University's option, to:
 - (i) terminate the Statement of Work and corresponding Purchase Order in accordance with **Section 8.1**; or
 - (ii) accept the Development Deliverable as nonconforming, in which case the fees will be reduced equitably to reflect the value of the Development Deliverable as received relative to the value of the Development Deliverable had it conformed to the Accessibility Requirement, the Site Specification and Documentation.



(d) Promptly upon completing acceptance testing, if University has determined that the Development Deliverable(s) conform to the Accessibility Requirement, the Site Specification, and Documentation therefor, University shall give Supplier written notice of its acceptance of the Development Deliverable(s). Each Development Deliverable will in any case be deemed accepted by University upon the expiration of any Testing Period if University has not delivered a Non-Acceptance Notice prior thereto. Acceptance of any Development Deliverable will be subject to Integration Testing as set forth in **Section 3.5**.

3.5 Integration Testing. Notwithstanding University's acceptance of any Deliverable, upon delivery of the final completed Website, University shall have the right to perform additional tests on each previously-accepted Development Deliverable to ensure full integration and compatibility with all elements of the Website. University shall perform Such testing, and Supplier shall correct any nonconformities, in accordance with the procedures set forth in **Section 3.3**, as though each such Development Deliverable were delivered on the date of delivery of the final Website.

4. University Obligations.

4.1 University Resources and Cooperation. University will be responsible for, on a timely basis in accordance with the Milestone Schedule:

(a) providing the University Materials and such other resources as may be specified in the Statement of Work;

(b) participating in scheduled meetings and making its personnel readily available for such meetings; and

(c) providing all consents, approvals and exception notices.

5. Payment of Fees.

5.1 Fees. Subject to the terms and conditions of this Agreement and the Statement of Work, the University shall pay the fees set forth in the Statement of Work ("**Fees**").

5.2 Responsibility for Costs. Supplier is responsible for all costs and expenses incurred in or incidental to the performance of Services, including all costs of any materials supplied by Supplier, all fees, fines, licenses, bonds, or taxes required of or imposed against Supplier, and all other of Supplier's costs of doing business.

5.3 Taxes. The University is exempt from state sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the University's exclusive use. Upon request, the University will provide Supplier with a Tax Exemption Letter evidencing the same.

5.4 Invoices. Supplier will invoice the University for Fees in accordance with the requirements set forth in the Statement of Work, including any requirements that condition the rendering of invoices and



the payment of Fees upon the successful completion of milestones. Supplier must submit each invoice via such delivery means and to such address as are specified by the University in the Statement of Work. Each separate invoice must:

- (a) clearly identify the Agreement and Purchase Order to which it relates, in such manner as is required by the University;
- (b) list each Fee item separately;
- (c) include sufficient detail for each line item to enable the University to satisfy its accounting and charge-back requirements;
- (d) for Fees determined on a time and materials basis, report details regarding the number of hours performed during the billing period, the skill or labor category for such Supplier Personnel and the applicable hourly billing rates; and
- (e) include such other information as may be required by the University as set forth in the Statement of Work.

5.5 Payment Terms. Invoices are due and payable by the University, in accordance with the University's standard payment procedures within thirty (30) calendar days after receipt, provided the University determines that the invoice was properly rendered.

5.6 University Audit of Supplier. University shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of Supplier involving transactions related to this Agreement until the expiration of three (3) years after final payment hereunder. Supplier further agrees to promptly furnish, when requested by University, such books, documents, and records of Supplier as are necessary to verify the accuracy of the amounts invoiced to University against any past or current goods and services provided by Supplier. If any audit discloses an overpayment by University or a discrepancy in the amount invoiced by Supplier against the goods and services actually provided by Supplier, Supplier will promptly reimburse University within thirty (30) days of University's notification to Supplier of any such overpayment, rectify such discrepancy, or both, and further pay University a fee equal to 25% of the amount of any overpayment.

5.7 Payment Does Not Imply Acceptance. The making of any payment or payments by the University, or the receipt thereof by Supplier, will in no way affect the responsibility of Supplier to perform the Services in accordance with this Agreement, and will not imply the University's Acceptance of any Services or the waiver of any warranties or requirements of this Agreement, including any right to service credits under the Service Level Agreement.

5.8 Payment Disputes. The University may withhold from payment any and all payments and amounts the University disputes in good faith, pending resolution of such dispute, provided that the University:



- (a) timely renders all payments and amounts that are not in dispute;
- (b) notifies Supplier of the dispute prior to the due date for payment, specifying in such notice:
 - (i) the amount in dispute; and
 - (ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Supplier and resolution by the parties;
- (c) works with Supplier in good faith to resolve the dispute promptly; and
- (d) promptly pays any amount determined to be payable by resolution of the dispute.

Supplier shall not withhold or delay any Services or fail to perform any other services or obligations hereunder by reason of the University's good faith withholding of any payment or amount in accordance with this **Section 5.8** or any dispute arising therefrom.

5.9 Right of Set-off. Without prejudice to any other right or remedy it may have, the University reserves the right to set off at any time any amount then due and owing to it by Supplier against any amount payable by the University to Supplier.

6. Intellectual Property Rights.

6.1 Work Product. Except as set forth in **Section 6.2**, **Section 6.4**, and **Section 6.5**, University is and will be the sole and exclusive owner of all right, title and interest in and to the Work Product, including all Intellectual Property Rights therein. In furtherance of the foregoing, the parties agree that, subject to **Section 6.2**, **Section 6.4**, and **Section 6.5**:

- (a) Supplier shall, and shall cause Supplier Personnel and Permitted Subcontractors to, create all Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976.
- (b) To the extent any Work Product does not qualify as work made for hire:
 - (i) Supplier shall, and hereby does, immediately on its creation, assign, transfer and otherwise convey to University, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to such Work Product, including all Intellectual Property Rights therein.
 - (ii) Supplier shall, and hereby does, irrevocably waive, and shall cause the Supplier Personnel to irrevocably waive in signed written instruments any and all claims such Supplier Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Work Product.
- (c) Supplier shall, and shall cause all Supplier Personnel and Permitted Subcontractors to, take all appropriate action and execute and deliver all documents, necessary or reasonably requested by



University to effectuate any of the foregoing provisions of this **Section 6.1**, or otherwise as may be necessary for University to prosecute, register, perfect or record its rights in or to any Work Product or any Intellectual Property Right therein. Supplier hereby appoints University as Supplier's attorney-in-fact with full irrevocable power and authority to take any such actions and execute any such documents if Supplier refuses or, within a period deemed reasonable by University, otherwise fails to do so.

6.2 Pre-Existing Materials. Supplier and its licensors are, and will remain, the sole and exclusive owners of all right, title and interest in and to the Pre-Existing Materials, including all Intellectual Property Rights therein.

6.3 University Materials. University and its licensors are, and will remain, the sole and exclusive owners of all right, title and interest in and to the University Materials, including all Intellectual Property Rights therein. Supplier has no right or license to use any University Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to University. All other rights in and to the University Materials are expressly reserved by University and its licensors.

6.4 Third-Party Materials. All right, title and interest in and to Approved Third-Party Materials will remain with the respective owners thereof, subject to any express licenses or sublicenses granted to University pursuant to or in accordance with this Agreement.]

6.5 Open-Source Components. All right, title and interest in and to any Open Source Components will remain with the respective owners thereof, subject to University's rights under the applicable Open-Source Licenses.

7. Licenses.

7.1 Pre-Existing Materials License. Supplier hereby grants to University such rights and licenses with respect to the Pre-Existing Materials that will allow University to use and otherwise exploit the Website, and any website that replaces or a substantial portion of the Website, to the same extent as if University owned the Pre-Existing Materials to the same extent as if University owned them without incurring any fees or costs to Supplier (other than the Fees set forth herein) or any other Person in respect of the Pre-existing Materials. In furtherance of, and without limiting, the foregoing, such rights and licenses shall:

(a) be perpetual, worldwide, fully paid-up and royalty-free;

(b) include the rights to use, reproduce, perform (publicly or otherwise), display (publicly or otherwise), modify, improve, create derivative works of, distribute, import, make, have made, sell and offer to sell the Pre-Existing Materials, including all such modifications, improvements and derivative works thereof, solely as part of, or as necessary to use and exploit, the Website and any successor website thereto; and

(c) be freely assignable and sublicensable, in each case solely in connection with the assignment or licensing of the Website or any portion thereof or successor thereto, and only to the extent



necessary to allow the assignee or sublicensee, as the case may be, to use and exploit the Website or portion thereof or successor thereto.

Supplier reserves all rights in the Pre-Existing Materials not expressly granted to University herein.

7.2 University Materials License. University hereby grants to Supplier the limited, royalty-free, non-exclusive right and license to the University Materials solely as necessary to incorporate the University Materials into the Deliverables as described in the Statement of Work. The term of such license shall commence upon University's delivery of the University Materials to Supplier, and shall terminate upon University's acceptance or rejection of the Deliverable(s) incorporating such University Materials. Subject to the foregoing license, University reserves all rights in the University Materials. University Materials shall be deemed University's Confidential Information.

7.3 Third-Party Materials Licenses. Supplier shall secure for the benefit of University, at Supplier's sole cost and expense, all necessary, rights, licenses, consents and approvals necessary for University to use the Approved Third-Party Materials in connection with the Website or any portion thereof or successor thereto, perpetually and worldwide, and to freely sublicense and assign such rights in connection with sublicensing or assigning, as the case may be, the Website or any portion thereof or successor thereto. Promptly upon execution of such license agreements, Supplier shall provide University with copies thereof. The University shall have such licensed rights in the Approved Third-Party Materials as are set forth in each license agreement for Third-Party Materials. All royalties, license fees or other consideration payable in respect of such licenses are included in the Fees hereunder unless specifically stated otherwise in the Statement of Work, and any additional amounts shall be the sole responsibility of Supplier.

7.4 Open-Source Licenses. Any use of the Open-Source Components by University will be governed by, and subject to, the terms and conditions of the applicable Open-Source Licenses, each as attached as exhibits to the Statement of Work.

8. Termination.

8.1 Termination for Cause. In addition to any right of termination set forth elsewhere in this Agreement:

(a) The University may terminate this Agreement, or an individual Statement of Work, for cause, in whole or in part, if Supplier: (i) endangers the security of University systems or University data; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or (iii) breaches any of its material duties or obligations under this Agreement. Any reference to specific breaches being material breaches within this Agreement will not be construed to mean that other breaches are not material.

(b) If the University terminates this Agreement, or a Statement of Work, under this **Section 8.1**, the University will issue a termination notice specifying whether Supplier must: (a) cease



performance immediately, or (b) continue to perform for a specified period. If it is later determined that Supplier was not in breach of this Agreement, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 8.2**.

(c) The University will only pay for amounts due to Supplier for Services accepted by the University on or before the date of termination, subject to the University's right to set off any amounts owed by the Supplier for the University's reasonable costs in terminating. Supplier must promptly reimburse to the University any Fees prepaid by the University prorated to the date of such termination. Further, Supplier must pay all reasonable costs incurred by the University in terminating for cause, including administrative costs, attorneys' fees, court costs, and transition costs.

8.2 Termination for Convenience. The University may terminate this Agreement, or an individual Statement of Work, in whole or in part, upon thirty days advance written notice, without penalty and for any reason. The termination notice will specify whether Supplier must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 8.3**. If the University terminates for convenience, the University will pay all reasonable costs for University approved Transition Responsibilities, and will forfeit any prepaid fees for the Services (provided such fees do not span more than one calendar year).

8.3 Transition Responsibilities. Upon termination or expiration of this Agreement, or an individual Statement of Work, for any reason, Supplier must, for a period of time specified by the University (not to exceed 90 calendar days; the "**Transition Period**"), provide all reasonable transition assistance requested by the University, to allow for the expired or terminated portion of the Statement of Work to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the University or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Services at the established Fees; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the University or the University's designee; (c) taking all necessary and appropriate steps, or such other action as the University may direct, to preserve, maintain, protect, or return to the University all University Materials and Confidential Information; and (d) preparing an accurate accounting from which the University and Supplier may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Agreement is automatically extended through the end of the Transition Period.

8.4 Effect of Termination. Upon and after the termination or expiration of this Agreement for any or no reason:

- (a) Supplier will be obligated to perform all Transition Responsibilities specified in **Section 8.3**;
- (b) Supplier will (i) return to the University all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the University's Confidential Information; (ii) permanently erase the University's Confidential Information from its computer systems; and (iii) certify in



writing to the University that it has complied with the requirements of this **Section 8.4(b)**, in each case to the extent such materials are not required by Supplier for Transition Responsibilities, if any.

8.5 Surviving Terms. The provisions set forth in the following Sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 6, Section 7.1, Section 7.3, this Section 8.1, Section 9, Section 10, Section 11, Section 12 and Section 16.**

9. Representations and Warranties.

9.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

(b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

9.2 Additional Supplier Warranties. Supplier warrants to University that:

(a) it will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement;

(b) the Work Product, including the Website and all Deliverables (excluding University Materials), as delivered by Supplier and used in accordance with this Agreement and the Documentation: (i) will not infringe, misappropriate or otherwise violate any Intellectual Property Rights or other rights of any third party; and (ii) will comply with all applicable Laws.

(c) in performing the Services hereunder, Supplier will comply with all Laws.

(d) when delivered, the Website and all Deliverables will not contain: (i) any virus, trojan horse, worm, backdoor, malware or other software the effect of which is to permit unauthorized access or to disable, erase, corrupt or otherwise harm any computer, systems or software, or (ii) any time bomb, drop dead device or other software designed to disable a computer program automatically with the



passage of time or under the positive control of any Person, or otherwise deprive University of its lawful right to use the Website and Deliverable; and

(e) when delivered and for twelve (12) months following the University's final acceptance of the Website, the Website and all Deliverables will be, and will function, in all respects in conformity with this Agreement and the Accessibility Requirement, the Site Specification, and Documentation. If any non-conformity is discovered during such warranty period, Supplier shall promptly remedy such non-conformity at Supplier's sole cost and expense.

9.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER THIS AGREEMENT.

10. Indemnification.

10.1 General Indemnification. Supplier must defend, indemnify and hold harmless the University, and the University's Board of Trustees, departments, officers, employees, agents, and contractors from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") that does or is alleged to arise out of or result from: (a) any breach by Supplier (or any of Supplier Personnel, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement; (b) any infringement, misappropriation, or other violation of any intellectual property right of any third party; and (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Supplier or any of Supplier Personnel, or by anyone else for whose acts any of them may be liable).

10.2 Indemnification Procedure. The University will notify Supplier in writing if indemnification is sought; however, failure to do so will not relieve Supplier, except to the extent that Supplier is materially prejudiced. Supplier must, to the satisfaction of the University, demonstrate its financial ability to carry out these obligations. The University is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the University deems necessary. Supplier will not, without the University's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

11. Limitations of Liability.

11.1 Disclaimer of Damages. NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.



11.2 **Limitation of Liability.** OTHER THAN SUPPLIER'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE STATEMENT OF WORK.

12. Confidentiality.

12.1 **Meaning of Confidential Information.** The term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) in the possession of the University and subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). Notwithstanding the above, in all cases and for all matters, University Data is deemed to be Confidential Information.

12.2 **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Supplier's Subcontractor is permissible where (a) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's responsibilities; and (b) Supplier obligates the Subcontractor in a written contract to maintain the University's Confidential Information in confidence. At the University's request, any of the Supplier's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 12.2**.

12.3 **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.



12.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the University, at the sole election of the University, the immediate termination, without liability to the University, of this Agreement.

12.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Agreement, each party must, within five (5) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Supplier or the University determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.

13. FERPA Compliance. University is a qualifying educational agency or institution under the U.S. Family Educational Rights and Privacy Act (“**FERPA**”). To the extent Supplier or its personnel have access to data protected by FERPA, Supplier acknowledges that for the purposes of this Agreement it is designated as a “school official” with “legitimate educational interests” in such data and associated metadata, as defined under FERPA and its implementing regulations, and agrees to abide by the limitations and requirements imposed on school officials under those regulations. Supplier agrees to use such data only for the purpose of fulfilling its duties under this Agreement, and will not monitor, share, or disclose any such data to any third party except as provided for in this Agreement, as required by law, or as authorized in writing by University.

14. Security Incident. Supplier will promptly notify University (but in no event later than forty-eight (48) hours after incident confirmation by Supplier) of any information security incidents involving the unauthorized disclosure of any personally identifiable information while maintained by Supplier (a “**Security Incident**”). The notice shall include the approximate date and time of the occurrence and a summary of the relevant facts, including a description of measures being taken to investigate and address the Security Incident. The parties agree with respect to any Security Incident that Supplier shall promptly investigate the cause of such Security Incident and shall at its sole expense take all reasonable steps to: (a) mitigate any harm caused to affected individuals, (b) prevent any future reoccurrence, and (c) comply with applicable data breach notification laws including the provision of credit monitoring and other fraud prevention measures.

15. Force Majeure.

15.1 Neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any:

- (a) acts of God;



- (b) flood, fire or explosion;
- (c) war, terrorism, invasion, riot or other civil unrest;
- (d) embargoes or blockades in effect on or after the date of this Agreement;
- (e) national or regional emergency;
- (f) passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition; or

(each of the foregoing, a "**Force Majeure Event**"), in each case, provided that (i) such event is outside the reasonable control of the affected party; (ii) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (iii) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.2 University may terminate this Agreement if a Force Majeure Event affecting Supplier continues substantially uninterrupted for a period of thirty (30) days or more. Unless University terminates this Agreement pursuant to the preceding sentence, all Milestone Dates shall automatically be extended for a period up to the duration of the Force Majeure Event.

16. General Provisions.

16.1 Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

16.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

16.3 Use of the University Name, Logo and Marks. The University acknowledges that Supplier may make public statements regarding the existence of this Agreement, its terms and conditions and an accurate description of the products or services being supplied without the consent of the University. However, other than as permitted by the previous sentence, Supplier will not use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University, or the name of any representative of the University without the prior written permission of the University in each instance.

16.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, must be in writing and addressed to



the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Supplier:

[SUPPLIER ADDRESS]

E-mail: [E-MAIL ADDRESS]

Attention: [NAME OF INDIVIDUAL TO RECEIVE NOTICES]

Title: [TITLE OF INDIVIDUAL TO RECEIVE NOTICES]

If to the University:

[UNIVERSITY ADDRESS]

E-mail: [E-MAIL ADDRESS]

Attention: [NAME OF INDIVIDUAL TO RECEIVE NOTICES]

Title: [TITLE OF INDIVIDUAL TO RECEIVE NOTICES]

Notices sent in accordance with this **Section 16.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

16.5 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

16.6 Assignment. Supplier may not assign this Agreement, nor any money due or to become due without the prior written consent of the University. Any assignment made without such consent shall be deemed void.

16.7 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

16.8 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party's authorized Representative. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed



as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16.9 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

16.10 Governing Law. This Agreement is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Agreement are governed by Michigan law, excluding choice-of-law principles.

16.11 Equitable Relief. Each party to this Agreement acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Agreement agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 16.11**.

16.12 Nondiscrimination Under Michigan Law. Pursuant to Section 209 of the Michigan Elliot-Larsen Civil Rights Act and Section 209 of the Michigan Persons with Disabilities Civil Rights Act, in providing services, the Supplier and its contractor(s) agree not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of age, color, familial status, height, marital status, national origin, race, religion, sex, weight, or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

16.13 Exclusion And Debarment. Supplier certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise ineligible for state or Federal program participation. In the event that Supplier becomes debarred, suspended or ineligible from state or Federal program participation, Supplier shall notify MSU in writing within three (3) business days of such event. To the extent that Supplier will provide services to any MSU medical entity, Supplier hereby represents and warrants that Supplier is not currently, and at no time has been sanctioned,



debarred, suspended, or excluded by any state or federally funded healthcare program, including without limitation, Medicare and Medicaid. Supplier agrees to immediately notify MSU of any threatened, proposed, or actual sanctions, debarment action, suspension, or exclusion by or from any state or federally funded health care program during the term of this Agreement.

16.14 Federal Contract Compliance.

(a) **University is an equal opportunity employer and a federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

(b) In accordance with Public Law 115-91 and FAR 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, and Public Law 115-232 and FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, Supplier is prohibited from using covered telecommunications equipment as defined in FAR 52.204-25 or covered articles as defined in FAR 52.204-23 with respect to any Services provided for the benefit of University. Supplier hereby represents and warrants that it will abide by the prohibitions contained in this Section.

16.15 Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the University, and its Services under this Agreement, and in the event of change in either Supplier's private interests or Services under this Agreement, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier's knowledge, there exists no actual or potential conflict between a University employee and Supplier.

16.16 Schedules All Schedules and Exhibits that are referenced herein are hereby incorporated by reference.

16.17 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement. A signed copy of this Agreement delivered by



facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

16.18 Entire Agreement. This Agreement, including the Statement of Work and other Schedules and Exhibits attached hereto, constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Agreement and those of any Schedule, Exhibit or other document, the following order of precedence governs: (a) first, this Agreement, excluding its Exhibits and Schedules; and (b) second, the Exhibits and Schedules to this Agreement as of the Effective Date. NO TERMS ON SUPPLIER'S INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE UNIVERSITY OR ANY ADMINISTRATIVE USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE UNIVERSITY AND THE ADMINISTRATIVE USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

MSU

BY: _____

Name: _____

Title: _____

Date: _____

Supplier

By: _____

Name: _____

Title: _____

Date: _____